

endeared him to his neighbors, and Charlie Cole stands as a wonderful role model of community involvement.

In conclusion, God bless our troops.

#### RECOGNIZING CHILDHELP USA AND NATIONAL DAY OF HOPE

(Mrs. BLACKBURN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, each day in the United States more than three children die from abuse at the hands of a family member. Most are under the age of 6. However, there is hope. Childhelp USA is an organization that is working hard to assist victims of neglect and abuse.

Childhelp USA has many centers across the country, one of which is in Tennessee. And in November, Childhelp USA Tennessee assembled the country's first Mobile Children's Advocacy Center. For the first time it allows professional Childhelp staff to reach out to abused children in the rural parts of our State. The 40-foot mobile center is outfitted with medical exam and play therapy rooms as well as professional staff.

In conjunction with National Child Abuse Prevention Month, Childhelp has initiated the National Day of Hope to be held on Wednesday, April 2. On this day Childhelp requests that each person take 3 minutes to pause and remember that three children die each day from abuse.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken after 6 p.m. today.

#### SMALLPOX EMERGENCY PERSONNEL PROTECTION ACT OF 2003

Mr. TAUZIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1463) to provide benefits for certain individuals with injuries resulting from administration of a smallpox vaccine, and for other purposes.

The Clerk read as follows:

H.R. 1463

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

##### SECTION 1. SHORT TITLE.

This Act may be cited as the "Smallpox Emergency Personnel Protection Act of 2003".

##### SEC. 2. SMALLPOX EMERGENCY PERSONNEL PROTECTION.

Title II of the Public Health Service Act (42 U.S.C. 202 et seq.) is amended by adding at the end the following part:

#### "PART C—SMALLPOX EMERGENCY PERSONNEL PROTECTION

##### "SEC. 261. DEFINITIONS.

"For purposes of this part:

"(1) VACCINE.—The term 'vaccine' or 'smallpox vaccine' means vaccinia (smallpox) vaccines, including the Dryvax vaccine.

"(2) COVERED INDIVIDUAL.—The term 'covered individual' means an individual—

"(A) who is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties;

"(B) who is or will be functioning in a role identified in a State, local, or Department of Health and Human Services smallpox emergency response plan approved by the Secretary; and

"(C) to whom a vaccine is administered pursuant to such approved plan—

"(i) during the effective period of the Declaration (including the portion of such period before the enactment of this part); and

"(ii) not later than the latest of—

"(I) 180 days after the effective date of the initial interim final regulations implementing this part;

"(II) 120 days after becoming an individual in an occupation described in subparagraph (A); or

"(III) 120 days after becoming an individual identified as a member of a smallpox emergency response plan described in subparagraph (B).

"(3) COVERED INJURY.—The term 'covered injury' means an injury, disability, illness, condition, or death (other than a minor injury such as minor scarring or minor local reaction) determined, pursuant to the procedures established under section 262, to have been sustained by an individual as the direct result of—

"(A) administration to the individual of a vaccine during the effective period of the Declaration; or

"(B) accidental vaccinia inoculation of the individual in circumstances in which—

"(i) the vaccinia is contracted during the effective period of the Declaration or within 30 days after the end of such period;

"(ii) smallpox vaccine has not been administered to the individual; and

"(iii) the individual has resided with, or has been in contact with, an individual who is (or who was accidentally inoculated by) a covered individual.

"(4) DECLARATION.—The term 'Declaration' means the Declaration Regarding Administration of Smallpox Countermeasures issued by the Secretary on January 24, 2003, and published in the Federal Register on January 28, 2003.

"(5) EFFECTIVE PERIOD OF THE DECLARATION.—The term 'effective period of the Declaration' means the effective period specified in the Declaration, unless extended by the Secretary.

"(6) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means an individual who is (as determined in accordance with section 262)—

"(A) a covered individual who sustains a covered injury in the manner described in paragraph (3)(A); or

"(B) an individual who sustains a covered injury in the manner described in paragraph (3)(B).

"(7) SMALLPOX EMERGENCY RESPONSE PLAN.—The term 'smallpox emergency response plan' or 'plan' means a response plan detailing actions to be taken in preparation for a possible smallpox-related emergency during the period prior to the identification of an active case of smallpox either within or outside the United States.

#### "SEC. 262. DETERMINATION OF ELIGIBILITY AND BENEFITS.

"(a) IN GENERAL.—The Secretary shall establish procedures for determining, as applicable with respect to an individual—

"(1) whether the individual is an eligible individual;

"(2) whether an eligible individual has sustained a covered injury or injuries for which medical benefits or compensation may be available under sections 264 and 265, and the amount of such benefits or compensation;

"(3) whether the covered injury or injuries of an eligible individual constitute a compensable disability, or caused the individual's death, for purposes of benefits under section 266.

"(b) COVERED INDIVIDUALS.—The Secretary may accept a certification, by a Federal, State, or local government entity or private health care entity participating in the administration of covered countermeasures under the Declaration, that an individual is a covered individual.

"(c) CRITERIA FOR REIMBURSEMENT.—

"(1) INJURIES SPECIFIED IN INJURY TABLE.—In any case where an injury or other adverse effect specified in the injury table established under section 263 as a known effect of a vaccine manifests in an individual within the time period specified in such table, such injury or other effect shall be presumed to have resulted from administration of such vaccine.

"(2) OTHER DETERMINATIONS.—In making determinations other than those described in paragraph (1) as to the causation or severity of an injury, the Secretary shall employ a preponderance of the evidence standard and take into consideration all relevant medical and scientific evidence presented for consideration, and may obtain and consider the views of qualified medical experts.

"(d) DEADLINE FOR FILING REQUEST.—The Secretary shall not consider any request for a benefit under this part with respect to an individual, unless—

"(1) in the case of a request based on the administration of the vaccine to the individual, the individual provides notice to the Secretary of an adverse effect of the vaccination not later than one year after the date of administration of the vaccine; or

"(2) in the case of a request based on accidental vaccinia inoculation, the individual provides notice to the Secretary of an adverse effect of such vaccination not later than two years after the date of the first symptom or manifestation of onset of the adverse effect.

"(e) REVIEW OF DETERMINATION.—

"(1) SECRETARY'S REVIEW AUTHORITY.—The Secretary may review a determination under this section at any time on the Secretary's own motion or on application, and may affirm, vacate, or modify such determination in any manner the Secretary deems appropriate.

"(2) JUDICIAL AND ADMINISTRATIVE REVIEW.—No court of the United States, or of any State, District, territory or possession thereof, shall have subject matter jurisdiction to review, whether by mandamus or otherwise, any action by the Secretary under this section. No officer or employee of the United States shall review any action by the Secretary under this section (unless the President specifically directs otherwise).

#### "SEC. 263. SMALLPOX VACCINE INJURY TABLE.

"(a) SMALLPOX VACCINE INJURY TABLE.—

"(1) ESTABLISHMENT REQUIRED.—The Secretary shall establish by interim final regulation a table identifying adverse effects (including injuries, disabilities, illnesses, conditions, and deaths) that shall be presumed to

result from the administration of (or exposure to) a smallpox vaccine, and the time period in which the first symptom or manifestation of onset of each such adverse effect must manifest in order for such presumption to apply.

“(2) AMENDMENTS.—The Secretary may amend by regulation the table established under paragraph (1). Amendments shall apply retroactively to claims pending at the time of promulgation of final amending regulations and to claims filed subsequently. If the effect of such amendment is to permit an individual who was not, before such amendment, eligible for compensation under this part, such individual may file a request for compensation or file an amended request for such compensation not later than one year after the effective date of such amendment in the case of an individual to whom the vaccine was administered and two years in the case of a request for compensation based on accidental vaccinia inoculation.

**“SEC. 264. MEDICAL BENEFITS.**

“(a) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary shall make payment or reimbursement for medical items and services as reasonable and necessary to treat a covered injury of an eligible individual. The Secretary may consider the Federal Employees Compensation Act (5 U.S.C. 8103) and its implementing regulations in determining the amount of such payment and the circumstances under which such payments are reasonable and appropriate.

“(b) BENEFITS SECONDARY TO OTHER COVERAGE.—Payment or reimbursement for services or benefits under subsection (a) shall be secondary to any obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer) under any other provision of law or contractual agreement, to pay for or provide such services or benefits. The Secretary shall have the discretion to establish mechanisms and procedures for providing the secondary benefits under this section.

**“SEC. 265. COMPENSATION FOR LOST EMPLOYMENT INCOME.**

“(a) IN GENERAL.—Subject to the succeeding provisions of this section, the Secretary shall provide compensation to an eligible individual for loss of employment income incurred as a result of a covered injury, at the rate specified in subsection (b).

“(b) AMOUNT OF COMPENSATION.—

“(1) IN GENERAL.—Compensation under this section shall be at the rate of 66 2/3 percent of monthly employment income, except that such percentage shall be 75 percent in the case of an individual who has one or more dependents. The Secretary may consider the Federal Employees Compensation Act (5 U.S.C. 8114 and 8115) and its implementing regulations in determining the amount of such payment and the circumstances under which such payments are reasonable and appropriate.

“(2) TREATMENT OF SELF-EMPLOYMENT INCOME.—For purposes of this section, the term ‘employment income’ includes income from self-employment.

“(c) LIMITATIONS.—

“(1) BENEFITS SECONDARY TO OTHER COVERAGE.—Any compensation under subsection (a) shall be secondary to the obligation of the United States or any third party (including any State or local governmental entity, private insurance carrier, or employer), under any other law or contractual agreement, to pay compensation for loss of employment income and shall not be made to the extent that compensation for loss of employment income has been made under such other obligations in an amount that equals

or exceeds the rate specified in subsection (b)(1).

“(2) NO BENEFITS FOR DEATH OR PERMANENT AND TOTAL DISABILITY.—No payment shall be made under this section in compensation for loss of employment income subsequent to the receipt by an eligible individual (or his survivor or survivors) of benefits under section 266 for death or permanent and total disability.

“(3) LIMIT ON TOTAL BENEFITS.—Total benefits paid to an individual under this section shall not exceed \$50,000 for any year, and the lifetime total of such benefits for the individual may not exceed an amount equal to the amount authorized to be paid under section 266.

“(4) WAITING PERIOD.—An eligible individual shall not be provided compensation under this section for the first 5 work days of disability.

**“SEC. 266. PAYMENT FOR DEATH AND PERMANENT, TOTAL DISABILITY.**

“(a) BENEFIT FOR PERMANENT AND TOTAL DISABILITY.—The Secretary shall pay to an eligible individual who is determined to have a covered injury or injuries meeting the definition of disability in section 216(i) of the Social Security Act (42 U.S.C. 416(i)) an amount determined under subsection (c), in the same manner as disability benefits are paid pursuant to the PSOB program in section 1201(b) of the OCCSSA with respect to an eligible public safety officer (except that payment shall be made to the parent or legal guardian, in the case of an eligible individual who is a minor or is subject to legal guardianship).

“(b) DEATH BENEFIT.—The Secretary shall pay, in the case of an eligible individual whose death is determined to have resulted from a covered injury or injuries, a death benefit in the amount determined under subsection (c) to the survivor or survivors in the same manner as death benefits are paid pursuant to PSOB program in section 1201 of the OCCSSA with respect to an eligible deceased (except that in the case of an eligible individual who is a minor with no living parent, the legal guardian shall be considered the survivor in the place of the parent).

“(c) BENEFIT AMOUNT.—

“(1) IN GENERAL.—The amount of the disability or death benefit under subsection (a) or (b) in a fiscal year shall equal the amount of the comparable benefit calculated under the PSOB in such fiscal year, without regard to any reduction attributable to a limitation on appropriations, but subject to paragraph (2).

“(2) REDUCTION FOR PAYMENTS FOR LOST EMPLOYMENT INCOME.—The amount of the benefit as determined under paragraph (1) shall be reduced by the total amount of any benefits paid under section 265 with respect to lost employment income.

“(d) BENEFIT IN ADDITION TO MEDICAL BENEFITS.—A benefit under this section shall be in addition to any amounts received by an eligible individual under section 264.

“(e) LIMITATIONS.—

“(1) DISABILITY BENEFITS.—Except as provided in paragraph (3), no benefit is payable under subsection (a) with respect to the disability of an eligible individual if—

“(A) a disability benefit is paid or payable with respect to such individual under the PSOB; or

“(B) a death benefit is paid or payable with respect to such individual under subsection (b) or the PSOB.

“(2) DEATH BENEFITS.—No benefit is payable under subsection (b) with respect to the death of an eligible individual if—

“(A) a disability benefit is paid with respect to such individual under subsection (a) or the PSOB; or

“(B) a death benefit is paid or payable with respect to such individual under the PSOB.

“(3) EXCEPTION IN THE CASE OF A LIMITATION ON APPROPRIATIONS FOR DISABILITY BENEFITS UNDER PSOB.—In the event that disability benefits available to an eligible individual under the PSOB program are reduced because of a limitation on appropriations, and such reduction would affect the amount that would be payable under paragraph (1) or (2) without regard to this paragraph, benefits shall be available under subsection (a) or (b) to the extent necessary to ensure that such individual (or his survivor or survivors) receives a total amount equal to the amount described in subsection (c).

“(f) REFERENCES.—References in this section—

“(1) to the Public Safety Officers' Benefits Program or PSOB are references to the program under part L, subpart 1 of title I of the OCCSSA; and

“(2) to the OCCSSA are to the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 et seq.).

**“SEC. 267. ADMINISTRATION.**

“(a) ADMINISTRATION BY AGREEMENT WITH OTHER AGENCY OR AGENCIES.—The Secretary may administer any or all of the provisions of this part through Memorandum of Agreement with the head of any appropriate Federal agency.

“(b) REGULATIONS.—The head of the agency administering this part or provisions thereof (including any agency head administering such Act or provisions through a Memorandum of Agreement under subsection (a)) may promulgate such implementing regulations as may be found necessary and appropriate. Initial implementing regulations may be interim final regulations.

**“SEC. 268. PARTICIPANT EDUCATION REGARDING SMALLPOX EMERGENCY RESPONSE PLANS.**

“In reviewing State, local, or Department of Health and Human Services smallpox emergency response plans described in section 261, the Secretary shall ensure that such plans are consistent with guidelines of the Centers for Disease Control and Prevention with respect to the education of individual participants (including information as to the voluntary nature of the program and the availability of potential benefits under this part), and the adequate screening of individuals for vaccine contraindications.

**“SEC. 269. AUTHORIZATION OF APPROPRIATIONS.**

“For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2007, to remain available until expended, including administrative costs and costs of provision and payment of benefits. The Secretary's payment of any benefit under section 264, 265, or 266 shall be subject to the availability of appropriations under this section.

**“SEC. 270. RELATIONSHIP TO OTHER LAWS.**

“Except as explicitly provided herein, nothing in this part shall be construed to override or limit any rights an individual may have to seek compensation, benefits, or redress under any other provision of Federal or State law.”.

**SEC. 3. AMENDMENTS TO PROVISION REGARDING TORT LIABILITY FOR ADMINISTRATION OF SMALLPOX COUNTERMEASURES.**

(a) AMENDMENT TO ACCIDENTAL VACCINIA INOCULATION PROVISION.—Section 224(p)(2)(C)(ii)(II) of such Act (42 U.S.C. 233(p)(2)(C)(ii)(II)) is amended by striking “resides or has resided with” and inserting “has resided with, or has had contact with.”.

(b) DEEMING ACTS AND OMISSIONS TO BE WITHIN SCOPE OF EMPLOYMENT.—Section 224(p)(2) of such Act (42 U.S.C. 233(p)(2)) is amended by adding at the end the following new subparagraph:

“(D) ACTS AND OMISSIONS DEEMED TO BE WITHIN SCOPE OF EMPLOYMENT.—

“(i) IN GENERAL.—In the case of a claim arising out of alleged transmission of vaccinia from an individual described in clause (ii), acts or omissions by such individual shall be deemed to have been taken within the scope of such individual’s office or employment for purposes of—

“(I) subsection (a); and

“(II) section 1346(b) and chapter 171 of title 28, United States Code.

“(ii) INDIVIDUALS TO WHOM DEEMING APPLIES.—An individual is described by this clause if—

“(I) vaccinia vaccine was administered to such individual as provided by subparagraph (B); and

“(II) such individual was within a category of individuals covered by a declaration under subparagraph (A)(i).”.

(c) EXHAUSTION; EXCLUSIVITY; OFFSET.—Section 224(p)(3) of such Act (42 U.S.C. 233(p)(3)) is amended to read as follows:

“(3) EXHAUSTION; EXCLUSIVITY; OFFSET.—

“(A) EXHAUSTION.—

“(i) IN GENERAL.—A person may not bring a claim under this subsection unless such person has received a determination about remedies available under section 262.

“(ii) TOLLING OF STATUTE OF LIMITATIONS.—The time limit for filing a claim under this subsection, or for filing an action based on such claim, shall be tolled during the pendency of a determination by the Secretary under section 262.

“(iii) CONSTRUCTION.—This subsection shall not be construed as superseding or otherwise affecting the application of a requirement, under chapter 171 of title 28, United States Code, to exhaust administrative remedies.

“(B) EXCLUSIVITY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses, except for a proceeding under part C of this title.

“(C) OFFSET.—The value of all compensation and benefits provided under part C of this title for an incident or series of incidents shall be offset against the amount of an award, compromise, or settlement of money damages in a claim or suit under this subsection based on the same incident or series of incidents.”.

(d) REQUIREMENT TO COOPERATE WITH UNITED STATES.—Section 224(p)(5) of such Act (42 U.S.C. 233(p)(5)) is amended in the caption by striking “DEFENDANT” and inserting “COVERED PERSON”.

(e) AMENDMENT TO DEFINITION OF COVERED COUNTERMEASURE.—Section 224(p)(7)(A)(i)(II) of such Act (42 U.S.C. 233(p)(7)(A)(i)(II)) is amended to read as follows:

“(II) used to control or treat the adverse effects of vaccinia inoculation or of administration of another covered countermeasure; and”.

(f) AMENDMENT TO DEFINITION OF COVERED PERSON.—Section 224(p)(7)(B) of such Act (42 U.S.C. 233(p)(7)(B)) is amended—

(1) by striking “includes any person” and inserting “means a person”;

(2) in clause (ii)—

(A) by striking “auspices” and inserting “auspices—”;

(B) by redesignating “such countermeasure” and all that follows as clause (I) and indenting accordingly; and

(C) by adding at the end the following:

“(II) a determination was made as to whether, or under what circumstances, an individual should receive a covered countermeasure;

“(III) the immediate site of administration on the body of a covered countermeasure was monitored, managed, or cared for; or

“(IV) an evaluation was made of whether the administration of a countermeasure was effective;”;

(3) in clause (iii) by striking “or”;

(4) by striking clause (iv) and inserting the following:

“(iv) a State, a political subdivision of a State, or an agency or official of a State or of such a political subdivision, if such State, subdivision, agency, or official has established requirements, provided policy guidance, supplied technical or scientific advice or assistance, or otherwise supervised or administered a program with respect to administration of such countermeasures;

“(v) in the case of a claim arising out of alleged transmission of vaccinia from an individual—

“(I) the individual who allegedly transmitted the vaccinia, if vaccinia vaccine was administered to such individual as provided by paragraph (2)(B) and such individual was within a category of individuals covered by a declaration under paragraph (2)(A)(i); or

“(II) an entity that employs an individual described by clause (I) or where such individual has privileges or is otherwise authorized to provide health care;

“(vi) an official, agent, or employee of a person described in clause (i), (ii), (iii), or (iv);

“(vii) a contractor of, or a volunteer working for, a person described in clause (i), (ii), or (iv), if the contractor or volunteer performs a function for which a person described in clause (i), (ii), or (iv) is a covered person; or

“(viii) an individual who has privileges or is otherwise authorized to provide health care under the auspices of an entity described in clause (ii) or (v)(II).”.

(g) AMENDMENT TO DEFINITION OF QUALIFIED PERSON.—Section 224(p)(7)(C) of such Act (42 U.S.C. 233(p)(7)(C)) is amended—

(1) by designating “is authorized to” and all that follows as clause (i) and indenting accordingly;

(2) by striking “individual who” and inserting “individual who—”;

(3) by striking the period and inserting “; or

“(ii) is otherwise authorized by the Secretary to administer such countermeasure.”.

(h) DEFINITION OF “ARISING OUT OF ADMINISTRATION OF A COVERED COUNTERMEASURE”.—Section 224(p)(7) of such Act (42 U.S.C. 233(p)(7)) is amended by adding at the end the following new subparagraph:

“(D) ARISING OUT OF ADMINISTRATION OF A COVERED COUNTERMEASURE.—The term ‘arising out of administration of a covered countermeasure’, when used with respect to a claim or liability, includes a claim or liability arising out of—

“(i) determining whether, or under what conditions, an individual should receive a covered countermeasure;

“(ii) obtaining informed consent of an individual to the administration of a covered countermeasure;

“(iii) monitoring, management, or care of an immediate site of administration on the body of a covered countermeasure, or evaluation of whether the administration of the countermeasure has been effective; or

“(iv) transmission of vaccinia virus by an individual to whom vaccinia vaccine was administered as provided by paragraph (2)(B).”.

(i) TECHNICAL CORRECTION.—Section 224(p)(2)(A)(ii) of such Act (42 U.S.C. 233(p)(2)(A)(ii)) is amended by striking “paragraph (8)(A)” and inserting “paragraph (7)(A)”.

(j) EFFECTIVE DATE.—This section shall take effect as of November 25, 2002.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from

Louisiana (Mr. TAUZIN) and the gentlewoman from California (Mrs. CAPPS) each will control 20 minutes.

The Chair recognizes the gentleman from Louisiana (Mr. TAUZIN).

GENERAL LEAVE

Mr. TAUZIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 1463.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. TAUZIN. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise today to urge all Members to support H.R. 1463, the Smallpox Emergency Personnel Protection Act of 2003, a critical bill introduced by the vice chairman of the Committee on Energy and Commerce, the gentleman from North Carolina (Mr. BURR).

In January of this year, our HHS Secretary Tommy Thompson called on health personnel and emergency responders from across the Nation to join smallpox emergency response teams in order to ensure that our country was better prepared to deal with any outbreak of this deadly disease caused by terrorists or rogue regimes such as Iraq. These patriots have been asked to volunteer to get the smallpox vaccine now so that they can administer the vaccine to the public should the need arise. Since then, roughly 25,000 American volunteers have indeed volunteered for this vaccine.

These health personnel and emergency responders are indeed to be saluted for their service to the country. However, we do not need tens of thousands of Americans to respond, we need hundreds of thousands, if not millions; and we need these many, many Americans, health personnel, and emergency first responders to heed the Secretary’s call.

The legislation before us today, which was requested by the administration, provides incentive for such individuals to roll up their sleeves and get a shot. The bill does a number of important things:

First, it provides for a total disability and death benefit equal to the amount payable under the Public Safety Officers Benefit, the PSOB, the existing Federal program that currently pays \$262,000 in a lump sum, indexed for inflation, to public safety officers who are killed or totally disabled in the line of duty.

Given the sacrifice that we are asking from these smallpox volunteers, a small number of whom may indeed suffer severe adverse reactions which could include death, it makes sense to provide these similar benefits.

But this bill goes further than the PSOB. It also provides coverage for all reasonable and necessary medical expenses that are incurred by individuals who are vaccinated and suffer adverse

effects, to the extent that such expenses are not picked up by their own individual primary health insurance. The bill provides also lost employment income if an individual misses more than 5 days of work due to adverse effects of the vaccine. Under this benefit, the individual could receive up to 75 percent of his monthly salary and up to \$50,000 a year in supplemental wages capped at the maximum amount of the PSO death benefit.

It is important to emphasize that the death and total disability benefits are additive to any other death or disability benefit the individual is already entitled to under Social Security, under State and local government, under employers, or under private insurance plans. And the lost wage income under this program, while secondary to other similar benefits the person may have, supplements those benefits to the extent the Federal program is more generous. For example, many States and employers have much lower annual and lifetime caps on workers' compensation benefits, which means the higher Federal figures in our bill would supplement those other benefits.

And finally, the legislation provides most sensible and noncontroversial technical amendments to last year's Homeland Security Bill to provide better liability protections to the hospitals, doctors, nurses, and public health officials at the State and local levels who we are asking to participate in this most important program.

I must say I am disappointed, however, that despite the good faith efforts on both sides of the aisle, and they have been good faith efforts, we are not able to reach a bipartisan agreement on the package. I strongly disagree that there should be any doubt as to the commitment of the administration or the commitment of the Congress to pay these benefits to injured volunteers as these bills become due.

I also disagree with the notion that the \$262,000 caps for disability and lost wages do not in fact provide a sufficient compensation package. If these caps are good enough for our public police officers and our firefighters who die in the line of duty, then I submit to you that indeed they are good enough for this program as well.

A few people have in fact died after taking the vaccine, although we do not know they died as a result of vaccine. But either way, we should not delay in establishing a compensation program that would help with these people, simply because we cannot agree right now on whether a \$262,000 figure is sufficient or not. We still need to provide, we need to move forward with this incentive to make sure people are adequately vaccinated to meet this threat.

Now, let us get the help to the people who need it now. If we find out down the road that the program is inadequate or certain respects need to be changed, we can always fix it later. This is an emergency. This will make

sure that we have the people available, ready to vaccinate all of America if, God forbid, the worst should happen and we suffer a smallpox attack.

Mr. Speaker, I reserve the balance of my time.

Mrs. CAPPS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is an important issue, important to the health and safety of our Nation.

Recent tragedies in the health care community have underscored the need for us to address it and pass a robust compensation package for victims. The President has called for America's nurses, firefighters, and other first responders to be vaccinated against smallpox. Ensuring our frontline health care responders are resistant to smallpox would enhance our ability to respond to an attack resulting from this kind of an outbreak. But this initiative is failing, and to make the program work we need to guarantee our first responders that they and their families will be compensated if they are harmed or killed by the vaccine.

If the administration insists that these people be vaccinated against the disease, then now more than ever it is critical that we provide the peace of mind that these frontline people deserve and need. They do not want hand-outs. They just want to know that if something happens to them, they and their families will be taken care of. It is not too much to ask. But I can tell you that the bill before us, as it is currently drafted, will not provide that level of assurance.

Before I came to Congress I worked as a public health nurse for many years. These are my colleagues that we are speaking of. And I know what it is like to be on the front line. If you will not take my word for it, listen to the American Nurses Association. They represent the interests of 2.7 million nurses across this country, and they have heard from their members. They oppose this bill because it is insufficient to make the program work.

First, the bill before us does not guarantee that this compensation program will be funded, and without a guarantee of funding, nurses and other first responders who serve their country and become harmed by the vaccine will have no assurance that the bill's promises will be kept.

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Second, this bill puts unfair caps on the wage compensation an injured nurse or other first responder can receive. These caps would unfairly penalize those families who lose their main source of income.

We should reject this bill; and instead, we should pass legislation such as the gentleman from California (Mr. WAXMAN) and I have crafted with our colleagues and with input with direct guidance from these first responders. Our legislation would ensure that medical benefits and the compensation in this bill are funded for years to come.

It would recognize and compensate the longer-term loss of wages that could result from such an adverse effect, and it would allow families who lose their main source of income because of the vaccine that they be fully compensated for their loss.

This bill would tell nurses that if they take this risk and serve their country that their families will not be left without resources or hope. Ultimately, the risk of adverse effects is low. Perhaps 200 people out of the 10 million that we want to vaccinate could be affected, but it is so important that we provide the assurance that if a person is one of those 200 people they will be compensated adequately.

Congress now has before it the opportunity to instill, first, confidence in our first responders and truly prepare us for the possible nightmare of a smallpox outbreak. The administration has been disappointed thus far in the turnout for the vaccine. If the wrong kind of legislation is passed, the turnout runs the risk of remaining small, thus, not meeting the goal of the administration.

If this bill before us is not effective, this is our opportunity to fix it. Let us take the time to get it right so that we can create this shield against a bioterrorist attack in the form of smallpox.

I urge my colleagues to support their first responders, to protect America from the threat of smallpox. Defeat this bill. Let us take the time to get this right.

Mr. Speaker, I reserve the balance of my time.

Mr. TAUZIN. Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from Ohio (Mr. BOEHNER), the distinguished chairman of the Committee on Education and the Workforce.

Mr. BOEHNER. Mr. Speaker, I want to thank my colleague for yielding me the time.

Mr. Speaker, I rise today in support of this important legislation to establish a compensation program for our Nation's emergency personnel in the event they suffer complications from smallpox vaccinations. As our United States troops fight the battle for freedom in Iraq, I am pleased that Congress can contribute this important piece of legislation which has been crafted to aid in our war effort and to enhance the safety of our Nation.

The face of war is changing. While past efforts may have focused solely on the armed aggression, the new face of war includes new threats in the form of biological or chemical warfare. Our Nation's armed services are not the only ones on the front lines of this conflict, because the threat of terrorism is here in the United States. Our emergency personnel, health care workers, and first responders are also on those front lines.

Health care workers, law enforcement officers, firefighters and others across the country are currently being vaccinated for smallpox. With this vaccine, as my colleagues have heard,

come some risk of some workers having serious reactions to the vaccine. It is also possible, though unlikely, that some may suffer life-threatening complications and even death, and fittingly, this measure will provide security to these workers who put their own health at risk in order to help the American public.

This legislation provides an important backstop to ensure that workers and their families will be protected if they suffer complications from the smallpox vaccine. Workers injured in the line of duty will be compensated first by their employers and second by the United States Government. For those who may not have access to workers compensation and other employer-sponsored health care, the Federal Government will provide appropriate compensation. Even those workers who have access to employer-sponsored benefits may receive additional compensation from the smallpox fund; and as such, the bill sets a Federal floor and ensures that each worker will be adequately compensated.

Under the bill, workers who might suffer a totally disabling injury or death as a result of the vaccine will receive cash benefits consistent with the amounts of benefits paid under the Public Safety Officers Benefits Program. For workers who suffer a less serious injury, the bill provides compensation for medical expenses and the loss of employment at a rate of 66½ percent of monthly pay, and workers who have dependents will be compensated at a rate of 75 percent monthly pay; and if a worker is eligible for less compensation than the federally established level, the fund will compensate the individual at the higher Federal level.

As chairman of the Committee on Education and the Workforce, I am pleased to assist in helping my colleagues at the Committee on Energy and Commerce draft this legislation, which I believe will ensure the safety of health care workers and first responders. I am also particularly pleased because my committee has primary jurisdiction over the employer-sponsored health care and workers compensation disability programs, which would include the Federal Employee Compensation Act, which will be the primary payers of the compensation. This measure will not only help our emergency personnel and first responders but enhance the safety of our Nation as well.

I want to urge my colleagues to support this bill.

Mrs. CAPPS. Mr. Speaker, I yield myself such time as I may consume.

(Mrs. CAPPS asked and was given permission to revise and extend her remarks, and include extraneous material.)

Mrs. CAPPS. Mr. Speaker, I insert for the RECORD letters from the following groups which I have before me. These letters are written by the American Public Health Association; the

International Union of Police Associations; the American Nurses Association; the International Association of Firefighters; the American Federation of Teachers; the American Federation of State, County and Municipal Employees; the Service Employers National Union; and the Infectious Disease Society of America.

AMERICAN NURSES ASSOCIATION,  
March 28, 2003.

DEAR REPRESENTATIVE: On behalf of the American Nurses Association (ANA), I urge you to oppose the Smallpox Emergency Personnel Protection Act (H.R. 1463). This bill does not provide adequate education, prescreening, surveillance, and compensation—therefore it will not result in an increase in the number of nurses volunteering for vaccinations. As this bill will be considered under the suspension of the rules, you will be denied the opportunity to vote in favor of the Capps/Waxman substitute that ANA supports.

The ANA is the only full-service association representing the nation's RNs through our 54 state and territorial constituent member organizations. Our members are well represented in the Administration's plan to vaccinate 10.5 million health care workers and first responders.

ANA supports efforts to ensure that our nation is prepared for a possible terrorist attack. ANA has, since November 2002, been trying to work with the Administration to formulate a strong smallpox vaccination program that will encourage nurses to volunteer to be immunized. Since the Administration's plan was first announced, ANA has repeatedly raised questions about the health and safety of nurses who are vaccinated, as well as their patients and families. ANA's concerns have been echoed by many in the public health community and reinforced by an expert panel from the Institute of Medicine. Unfortunately, the Smallpox Emergency Personnel Protection Act (H.R. 1463), fails to address these questions.

The smallpox vaccine is a live virus. It has the worst record of negative side effects of any vaccine in the world. It is imperative, as a matter of public health, that those being vaccinated understand the risks of the vaccine to themselves and their loved ones, and be prescreened for conditions that require them to refuse the vaccine. The smallpox inoculation site can shed the live virus for up to three weeks. In the 1960s, more than 20% of the adverse vaccination events occurred in secondary contacts. Therefore, the vaccination program poses a risk not only to nurses, but also to their patients and families.

Members of the armed services have received personalized education, and free and confidential prescreening prior to the administration of the vaccine. This process properly screened out one-third of the potential recipients. The Smallpox Emergency Personnel Protection Act fails to require a similar program. In addition, H.R. 1463 fails to require sufficient funding needed to ensure that state and local public health officials can actually implement the crucial education, prescreening, and surveillance programs. The recent death of a Maryland nurse, a Florida nurse aide, and a National Guardsman only underscore the need for this robust education, prescreening, and surveillance effort. Nurses and other first responders will continue to feel uncomfortable about the vaccine until they receive the reliable information needed to make an informed decision.

Furthermore, H.R. 1463 contains an insufficient, unfunded compensation program. The Administration is basically asking healthy

nurses to place themselves (as well as their patients and families) at risk for the common good. The vaccination has no tangible benefits for nurses; it is sought in the name of homeland security. ANA does not believe that nurses should be made to bear this public risk without the guarantee of a real compensation program. H.R. 1463 contains an unacceptable lifetime cap on wage replacement and fails to ensure that funds will be available for the compensation fund.

ANA urges you to vote against H.R. 1463. Your no vote does not mean that you oppose a smallpox compensation program. In fact, the solid disapproval of this bill will demonstrate needed support for a real smallpox vaccination program, such as the Capps/Waxman substitute. Please feel free to call Erin McKeon (202) 651-7095 or Christopher Donnellan (202) 651-7088 on my staff with any questions regarding this letter.

Sincerely,

ROSE GONZALEZ, MPS, RN,  
Director, Government Affairs.

INFECTIOUS DISEASES SOCIETY  
OF AMERICA,  
March 28, 2003.

Hon. J. DENNIS HASTERT,  
Speaker.

House of Representatives.

DEAR SPEAKER HASTERT: I am writing on behalf of the Infectious Diseases Society of America (IDSA) and the 7,000 infectious diseases physicians and scientists we represent to thank you and other House leaders on both sides of the aisle for pursuing a plan to compensate individuals who may be injured during the implementation of the National Smallpox Immunization Plan (NSIP).

Over the past year, IDSA and its members—including those who were on the front-line of smallpox eradication efforts—have provided essential information to the federal and state governments as they have prepared responses to a potential smallpox event. ID physicians will be integrally involved should a bioterrorism event occur; an ID specialist discovered the first anthrax case that occurred in Florida. Presently, many of our members are working with state and local public health officials to oversee NSIP's implementation.

IDSA's leaders believe strongly, as you do, that the creation of a compensation plan is essential to NSIP's success. As the House moves forward next week to consider legislation to establish such a program, we would like to take this final opportunity to stress to you the expert opinion of our leaders on this subject. IDSA closely reviewed the Administration's proposal, which Congressman Richard Burr introduced this week, H.R. 1463, as well as H.R. 865, sponsored by Congressman Henry Waxman. Certain aspects of the Administration's proposal appear promising. However, IDSA is concerned that the Administration's proposal does not include all of the elements necessary to ensure NSIP's success. Below, we have highlighted the elements that our leaders believe are critical and ask that House leaders include them in whatever legislation the House passes.

One element that IDSA believes to be of primary significance to the success of NSIP is universal eligibility. That is, all individuals injured as a consequence of NSIP's implementation should be compensated for their injuries. Eligibility should not be promised upon whether injured individuals volunteered to participate in the program or were injured as a result of a secondary transmission. Moreover, such eligibility should extend to individuals who present symptoms that are obviously associated with contact vaccinia, regardless of whether they can establish a link back to a specific vaccinee. Finally, an individual's eligibility should not

be limited by an arbitrarily established time limit (e.g., 180 days after interim final rule is published or 120 days after becoming a covered person), but should extend throughout the period of time that NSIP is being implemented as well as for a reasonable period of time after the last vaccination takes place.

The second essential element IDSA's leaders support is fair and adequate compensation for all individuals who are injured as a consequence of NSIP's implementation. It is just and right that individuals be made whole for the injuries they suffer as the result of a program being carried out under the auspices of national security. Under H.R. 1463, compensation for medical expenses, disability, lost wages and death is modeled after the Public Safety Officers Benefit program (PSOB). The PSOB program is designed to work in conjunction with other benefit programs, such as workers' compensation and health insurance and is designed primarily to deal with death and total, permanent disability. In the case of smallpox, there are no guarantees that a person injured by the smallpox vaccine will be covered by workers' compensation or will be adequately insured. As a result, those injured as a result of NSIP may receive far less compensation than those PSOB currently covers. Therefore, IDSA strongly urges House leaders to supplement the PSOB model found in H.R. 1463 to include the following criteria relating to medical expenses, disability, lost wages and/or death:

Guaranteed immediate medical care for all injured;

A significantly more generous compensation package for death than what is found in the H.R. 1463;

Permanent disability benefit of unreimbursed actual wages and unreimbursed medical costs not subject to any limitations;

Payment of non-economic damages up to \$250,000;

Compensation for temporary disability, including unreimbursed medical costs and unreimbursed actual wages starting at day one.

Finally, IDSA believes it to be essential that this program be authorized through mandatory funding mechanisms and not be paid for through discretionary funding sources.

IDSA leaders are available to work with you and other Congressional leaders to achieve quick passage and enactment of a smallpox compensation plan that makes whole all individuals injured during the implementation of President Bush's NSIP. Thank you again for the leadership you have shown in moving this important legislation forward. Should you have any questions, please feel free to contact Robert J. Guidos, JD, IDSA's director of public policy at 703-299-0200.

Sincerely,

W. MICHAEL SCHELD,  
President.

INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS,  
Washington, DC, March 28, 2003.

HOUSE OF REPRESENTATIVES,  
Washington, DC.

DEAR REPRESENTATIVE: On behalf of the nation's more 260,000 professional fire fighters and emergency medical personnel, I reluctantly must urge you to vote against H.R. 1463, the Smallpox Emergency Personnel Protection Act, under suspension of the rules.

While we strongly endorse the need for a comprehensive smallpox vaccination program, H.R. 1463 contains a number of significant deficiencies. Considering this legislation under suspension of the rules will prohibit amendments from being offered to address these concerns.

As currently drafted, H.R. 1463 fails to adequately provide for education and screening of the workers who are being asked to receive this vaccine. As the recent death of two nurses demonstrates, the vaccine should not be administered to certain people. While H.R. 1463 addresses compensation for people who die from the vaccine, it does not contain adequate safeguards to prevent those deaths from happening in the first place.

In addition, we have concerns about the compensation package contained in H.R. 1463. The legislation appears to have been crafted to serve as a supplement to workers compensation, but it is far from clear that workers compensation would cover injuries stemming from the vaccine. Because the smallpox vaccination program is a voluntary program, state workers comp systems may deny benefits.

For these and other reasons, we believe the House should consider improvements to H.R. 1463. We therefore urge you to vote against H.R. 1463 under suspension, so that the House may have the opportunity to debate and consider amendments to the proposal.

Sincerely,

BARRY KASINITZ,  
Director, Governmental Affairs.

Mr. Speaker, I yield as much time as he may consume to the gentleman from California (Mr. WAXMAN), the ranking member of the Committee on Government Reform, with a long history of concern and investigation into the vaccine policy of this Nation.

Mr. WAXMAN. Mr. Speaker, I thank my colleague very much for yielding me time to speak on this issue, and I do so with a great deal of regret because on the House floor today we should be backing a bill on a bipartisan basis without any dissent because, whether one is a Democrat or a Republican, all of us want to encourage people in the health care and first responder community to get the vaccination for smallpox so they can be of service to all of us should, God forbid, there be a smallpox attack.

I am forced now to rise in opposition to this bill, and I want to point out that the bill is on the suspension of the rules, which is ordinarily reserved for noncontroversial matters. As a matter of fact, this bill is very controversial. It should have been debated and considered under the rules of the House. That would have given Members an opportunity to put forward alternatives so that the Members of the House of Representatives could listen to a debate and make choices on policies.

Instead, what we have is a suspension calendar being used to close off any opportunity for amendments, to prevent alternatives from being put forward so our colleagues who have been duly elected in 435 districts in this country, could have the right to choose what they thought was the best policy. This suspension of the rules procedure is nothing more than a gag to prevent Members, Democrats and Republicans, from being able to make choices, which is what they were elected to do.

The reason I oppose this bill is substantive. This bill will not adequately compensate nurses, firefighters, police officers, and other first responders who are injured by the smallpox vaccine, a

vaccine that they take voluntarily in order to make sure that the country is prepared for a bioterrorist attack.

We have tried to work with the Republicans to craft legislation that all of these groups can support. However, the Republicans were unwilling to agree to a meaningful compensation program and have put forward H.R. 1463, a bill that is opposed by every one of these groups.

The issue of how to compensate people for smallpox vaccine injuries is only hard if someone decides to make it hard, and that seems to be what the House Republican leadership and the Bush administration have done. The science is not hard. For every million people who are immunized against smallpox, one of two will die and 10 to 20 will become severely ill or disabled.

The policy is not hard. If people get injured in the line of public duty, the public should compensate them, and the administration has asked nurses and firefighters and other first responders to take smallpox shots, not for their own good, but to protect all Americans in case of a bioterrorist attack.

The substance is not hard. A compensation program should be clear about what it covers. It should provide decent benefits if someone is disabled or killed, and it should have guaranteed funding.

The law is not hard. We have a successful program of no-fault compensation for children who are injured by vaccines. We have programs for Federal workers and even Federal volunteers who are disabled or killed. We even have a program for compensation of people hurt or killed on September 11, 2001.

The budgeting is not hard. If every nurse or firefighter got the average award from the September 11 fund, which they will not, we would only be committing \$18 to \$33 million per million vaccinations. At most, that is 400ths of 1 percent of what the administration has requested for the war.

The process is not hard. If there is honest disagreement about legislation, which there is, then the House should be allowed to debate amendments and make choices. This should be an easy one, but the House leadership and the administration are making it very hard.

H.R. 1463 includes a lifetime cap on wage assistance for injured first responders and their families. This means that the families of nurses or other first responders may have to fend for themselves without a bread winner after just a few years of compensation. The lump-sum payment offered by H.R. 1463 is clearly inadequate for death or permanent disability for a nurse who has a family to support.

A second problem is that H.R. 1463 requires that funding for the compensation program be subject to the uncertainties of the appropriations process. A guaranteed funding stream is a linchpin of a successful and meaningful



compensation program. Without it, Congress is making a promise that it may not keep.

A third problem with this legislation is that it limits eligibility for compensation for those people who are vaccinated within a short time period after the implementation of the program. This provision is not only vigorously opposed by all of the groups being asked to take the vaccine but also by the State and local officials running the vaccination program.

I genuinely do not understand why the House leadership and the administration have decided to draw this line. The smallpox immunization program is not working. Everyone agrees that one of the reasons that there is not a compensation program in place to reassure nurses and firefighters and other first responders, that if they are injured by the vaccine, they and their families will be provided for, and the representatives of those organizations agree that the Republican bill is not enough to reassure their members.

Those same representatives agree that the proposals made by the gentlewoman from California (Mrs. CAPPS) and some of the others of us who were working with her will succeed. It is very disappointing that the legislative process has been cut short and that the gentlewoman from California (Mrs. CAPPS) has been denied the chance, even the chance, to offer her amendment.

Why are the leadership and the administration making this so hard? I do not have an answer to that question, but I do know what we need to do next. Let us defeat this bill, negotiate a reasonable one, and then move on to the genuinely tough problems facing our country.

I would like to respond to the comparisons of H.R. 1463 with the Public Safety Officers Benefit program. This was alluded to by the gentleman from Louisiana (Mr. TAUZIN). This is a false comparison. The Public Safety Officers Benefit program is meant to supplement what police officers and others receive when injured in the line of duty. There are many other State and local programs that also provide compensation.

In contrast, H.R. 1463 is the sole source of compensation for many health care workers and their contacts who may be injured.

□ 1430

And let me emphasize that point. It is not just the first responders who may be injured, but the family members who may be injured as well, by the vaccine taken by the nurse or firefighter or police officer, because they can be subject to injury by exposure to the person who has been immunized.

A true comparison would compare H.R. 1463 with other compensation programs. By a true comparison, H.R. 1463 is clearly not adequate. This bill provides far less than benefits provided to Americans injured by childhood vac-

cines in the National Vaccine Injury Compensation Program. H.R. 1463 provides far less than what Federal employees receive, civilian or military, if injured under the Federal Employee Compensation Act. And H.R. 1463 also provides far less than what Members of Congress can get if injured or disabled.

If it is good enough for Members of this body, we should not hesitate to provide it to those Americans on the front lines of any bioterrorist attack who are protecting all Americans. We are subject to compensation without caps. We ought to do the same for those who are standing up for all Americans should there be a terrorist attack of smallpox.

People have told us they need to have a program that will counsel them and educate them, because some people should not be immunized at all. But there is no such provision for that kind of screening mechanism, an educational effort in the Republican bill, even though it would save money because people would not be immunized if they knew they might be at a high risk. And people have told us that if they are going to be asked to be at risk, we ought to stand behind them. The Republican bill does not stand behind these first responders.

This should be negotiated on a bipartisan basis, or at least let the House work its will. I urge our colleagues to vote against this H.R. 1463, defeat it on the suspension calendar and insist that we go back and work on legislation that will accomplish the purpose that all of us have in mind in providing legislation for such a Smallpox Emergency Personnel Protection Act.

Mr. Speaker, I wish to provide for the RECORD two letters, one from the Service Employees International Union and one from the American Federation of State, County, and Municipal Employees, which I think further elaborates on this issue.

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOY-  
EES, AFL-CIO,

*Washington, DC, March 28, 2003.*

DEAR REPRESENTATIVE: On behalf of the 1.3 million members of the American Federation of State, County and Municipal Employees (AFSCME), including over 360,000 health care workers and first responders, we are writing to urge you to oppose H.R. 1463, introduced by Representative Richard Burr and scheduled on the suspension calendar for Monday, March 31.

H.R. 1463 would establish a deeply flawed smallpox compensation program for health care workers and first responders injured by the smallpox vaccination. However, this legislation fails to safeguard the health and safety of workers asked to volunteer for the smallpox vaccination program. Moreover, the bill fails to address the concerns of workers who fear that a serious injury or death from the smallpox vaccine would lead to economic catastrophe for themselves and their families.

While the Administration had hoped to vaccinate up to 10.5 million workers, only about 21,000 workers have been vaccinated thus far. Clearly, there has been a great reluctance among health care workers and first responders to risk the loss of health and

income without an adequate safety net for themselves and their families. While the legislation is premised on the assumption that workers will be eligible for workers' compensation in the event of an injury, the reality is that, in most states, workers cannot depend on this. In fact, there are only 14 states where it appears at all certain that claims for benefits will be honored by the state workers' compensation system.

Therefore, workers in most states who are permanently and totally disabled will be eligible only for this bill's maximum lump sum payment of \$262,100. This represents about five years' wages for the average nurse—not enough to sustain an individual or family over a lifetime. For a worker who suffers partial or temporary disability, the benefit is also capped at \$262,100 over a lifetime. Health care workers and first responders who suffer injuries that limit their ability to earn a living must be compensated at a level that reflects their reduced earnings capability for the duration of their injury. If the aim of the legislation is to encourage workers to be vaccinated, H.R. 1463 will not do the job. Workers will continue to be reluctant to be vaccinated in the absence of assurances that they will not face economic ruin should they become injured.

While the bill provides medical benefits for the treatment of injuries or illnesses, it does not provide medical benefits for rehabilitation, palliative care or long term care that may be needed. This is a significant gap in health coverage for workers asked to risk their health.

Another significant flaw in the bill is that funding for compensation and medical benefits are not mandatory. Workers who have lost their health and livelihood should not have to wage a fight for compensation each year during the appropriations process.

The legislation fails to ensure that the smallpox program will be carried out safely, in stark contrast to the program in place for military personnel. The bill does not require that health departments make medical tests, such as pregnancy tests, available to workers in order to screen out those who ought not to be vaccinated. The legislation also fails to include requirements for monitoring those who are vaccinated to catch adverse reactions before they develop into life threatening complications, similar to the military plan. There is also no funding for state and local public health departments to carry out this expensive program safely.

The legislation also fails to include a table of injuries that ensure that workers will be awarded compensation quickly. After years of experience with the smallpox vaccine, there are injuries, that occur within specific time periods, that are known to be caused by the vaccine. This schedule of injuries must be included to ensure that compensation will be quick and certain. Otherwise, workers cannot be certain before receiving the vaccine that the most likely serious injuries will qualify for compensation.

We also object to the bill's requirement that workers receive the vaccination within 180 days of the date regulations are issued. Any worker that is vaccinated under the Secretary's declaration must be eligible for federal compensation. It is punitive to deny compensation to a worker who opts to participate at a later date.

H.R. 1463 is deeply flawed. We strongly urge you to oppose this bill.

Sincerely,

CHARLES M. LOVELESS,  
*Director of Legislation.*

*March 28, 2003.*

DEAR REPRESENTATIVE: On behalf of the 1.5 million members of the Service Employees International Union (SEIU), including over

750,000 health care workers and first responders, I am urging you to vote against H.R. 1463 because it fails to provide adequate protection to frontline workers who are volunteering for the smallpox vaccination program. The bill, introduced by Representative Richard Burr, is expected to come before the House for a vote as early as Monday, March 31, and will be offered under suspension without providing an opportunity to vote for a stronger bill.

Since the Administration first announced the civilian voluntary smallpox vaccination program, SEIU has worked to protect health care workers, first responders, their patients and the public through aggressive education, medical screening, and surveillance, and to ensure they would have access to a good compensation program. Now that three people have died and others have experienced cardiac-related problems in the days after their inoculations this only reinforces the critical need for a comprehensive program—which this legislation does not provide.

We understand the urgency of the program, especially in this time of war. But at the same time, frontline workers who respond to the call to protect other citizens in a time of national crisis deserve the same protections being provided to our military. To address the serious gaps in this plan, it is incumbent upon Congress to develop bipartisan legislation that encompasses the following issues:

**Aggressive medical screening, monitoring and treatment**—The legislation must provide for a program to screen out workers with any and all contraindications. Additionally, medical surveillance is essential to assess the program's effectiveness and ensure that any adverse reactions are treated before they become life threatening, as evidenced by the recent reports of heart related problems.

**Adequate compensation**—Already, there has been a great reluctance among health care workers to risk injury and loss of income without an adequate safety net for themselves and their families. Any compensation package must be retroactive and cover anyone who suffers a serious reaction as a result of the vaccine, as well as those injured through close contact with a vaccine recipient.

**Ful accountability**—Thorough investigation of, and full disclosure of adverse events under both the military and civilian plan must be reported immediately, and organizations representing potential vaccine recipients deserve notification along with the news media.

**Guaranteed funding**—There must be mandatory funding for the compensation program to ensure money is available to compensate those who have been injured or died as a result of the vaccine. As was recently recommended by the Institute of Medicine, there must be a clear commitment that adequate funding shall be provided to the states to implement education, screening, and medical surveillance through the emergency supplemental for Homeland Security needs.

It is absolutely critical that this nation's vaccination plan does not pose increased risks to the American people. We believe the program should be suspended until there is good legislation that ensures these safeguards are in place. Please vote against H.R. 1463, the Smallpox Emergency Personnel Protection Act, and take immediate action to support stronger legislation that will truly protect health care workers, patients, and the public.

Sincerely,

ANDREW L. STERN,  
*International President.*

Mr. TAUZIN. Mr. Speaker, I yield myself 2 minutes to briefly set the record straight.

There has been extraordinary negotiations with the minority on this bill, over 2 weeks of it. The administration brought this bill to us as an emergency. It called upon us immediately to give authority to provide these benefits to people who would volunteer to vaccinate American citizens in the event of an attack of smallpox in this country, which could come at any time, as we know, particularly as hostilities are engaged in the Middle East and Iraq.

It brought it to us as an emergency and we took over 2 weeks to negotiate. And we negotiated over a dozen changes, I am told. The most important change we made was to bring up that disability cap from \$50,000 a year, that out-of-work cap, to the same level we provide for policemen and firemen in this country. And, Mr. Speaker, I would say to the gentleman from California (Mr. WAXMAN) that this is a supplemental program, just as that program is. It is on top of. It is full secondary coverage of medical benefits with no deductibles. That is a lot better than most plans. It is primary lump sum disability and death benefit that, under the Federal Public Safety Officers and Employees is equal to \$262,000. It is secondary coverage for temporary and partial disability from \$50,000 a year, again we raised it from the administration provision, all the way up to the \$262,000 level. It is on top of disability benefits under Social Security; on top of the benefits available in the State Employee or Private Disability Benefits, and we still preserve the right to sue in Federal torts claim court.

Doggone right we are behind those volunteers. Doggone right this is an emergency. But we took 2 weeks, and I took it with a great deal of pain on my conscience because I thought every night, when we were negotiating this thing with our colleagues over here, I thought every night, what happens if tomorrow we get hit and we have not passed this bill yet and we do not have enough volunteers out there to vaccinate all of America. What happens if every day I take negotiating with the other side is a day we put our country at risk. And I suffered every night with that thought for 2 weeks. We have negotiated this bill to a point that it ought to get passed today.

Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. BURGESS).

Mr. BURGESS. Mr. Speaker, I thank the gentleman for yielding me this time, and today I rise in support of H.R. 1463, the Smallpox Emergency Personnel Act of 2003.

I will just add, in light of the comments made by the chairman, that I come to this body as a physician and I likely, myself, will take this vaccination to become a first responder.

Mr. Speaker, H.R. 1463 is a meaningful first step toward ensuring the broadest acceptance of the President's call for voluntary vaccinations by public safety personnel. In my home State of Texas, to date, only 1,700 first re-

sponders have been vaccinated for smallpox. Of this number, Texas health officials report that there have been no adverse reactions to date.

A number of factors can be attributed to the slow roll-out of this vaccination campaign, but one of the major factors involved is first responders are hesitant to take a vaccine with potential side effects. We must be very clear about the current vaccination campaign. Different people react to different medications differently. A great majority of those who will receive this smallpox vaccination will have no reaction at all. A handful, however, could face complications. Some of these may be as minor as a rash. A small percentage of that number could face more serious health complications, such as postvaccinal encephalitis or endocarditis.

H.R. 1463 will ensure that a broad safety net is available for those very few individuals that may suffer from an adverse reaction to the smallpox vaccine. Under this bill, first responders are provided with death and disability benefits comparable to the benefits police officers and firefighters already have access to under the Public Safety Officers Benefit Program. First responders who have an adverse reaction could also qualify for lost employment income benefits, coverage for medical expenses, and certain liability protections. H.R. 1463 will give first responders peace of mind to do something that will protect all Americans.

First responders are on the front lines of our war against terrorism and play a vital role in the instance of a terrorist attack. Our enemies have shown us that they will go to any length to kill innocent men, women and children. If they ever obtain a weapon as horrifying and as devastating as smallpox, let there be no mistake, there will be no hesitancy that they would use it. However, if they were able to employ such a weapon, American first responders will have a greater ability to protect all of us if they have already been inoculated from this debilitating and life-threatening disease.

Americans are counting on our health care professionals to be vaccinated against smallpox. By vaccinating these important first responders, we will be able to contain a potential outbreak and save thousands of lives. Americans are looking to the House of Representatives for leadership on this issue. For that reason, I urge my colleagues to protect first responders and give them the peace of mind to protect all of us.

Mrs. CAPPS. Mr. Speaker, could I inquire what time remains?

The SPEAKER pro tempore (Mr. PETRI). The gentlewoman from California (Mrs. CAPPS) has 14½ minutes remaining and the gentleman from Louisiana (Mr. TAUZIN) has 6½ minutes remaining.

Mrs. CAPPS. Mr. Speaker, I yield myself such time as I may consume to



say, with all due respect to my chairman, for whom I have a great deal of respect, that I commend him for his sense of urgency about the timing of this. The first responders, my colleagues who are nurses, have told us that they want confidence before they are going to roll up their sleeves and take this vaccine, and that this bill does not give them the confidence and that is why we stand in opposition to this bill.

Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. WAXMAN) for a response.

Mr. WAXMAN. Mr. Speaker, I thank the gentlewoman for yielding this time to me.

The administration has asked people to take this immunization in the health care area and first responders have not been doing it. One of the reasons, according to the Institute of Medicine, is because they do not feel that they are going to be backed up by the government when they take the risk of some adverse event.

Now, I want to point out to my good friend, the gentleman from Louisiana, the chairman of the committee, that he should not personalize this whole matter and have it on his conscience that we cannot pass this bill today. Of course, this could have come under the rules and we could have had opportunity for amendments to consider. But I want to point out that we asked for smallpox compensation as part of the bioterrorism bill in 2001, we asked for smallpox compensation as part of the homeland security bill in 2002, we formally requested an administration proposal in December 2002, and we proposed our own bill in February of this year. Only in March, 2 weeks ago, did the majority respond. And now, of course, it is take it or leave it. Take it or leave it. That is what we are being told.

This is a bad policy and a bad process by which to protect the public health. We had negotiations by staff. It might have helped for Members to sit down and talk this through. And if Members and staff cannot agree, then we have committees and subcommittees to consider the details of legislation. And if it is too urgent for committees and subcommittees to act after all this time, at least let the House consider a bill and consider various alternatives.

I think we are now engaged in a very bad process, and I think that we are being asked to take very bad policy that is going to be self-defeating. Because if many of the nurses do not want it, and the firefighters do not want it, and the police members do not want it, and other first responders do not feel it is adequate and they are not going to be compensated, then we are not accomplishing the goal that we should for all of us.

The SPEAKER pro tempore. The Chair wishes to inform the House that he misspoke in response to the inquiry of the gentlewoman from California (Mrs. CAPPs). There was 4½ minutes re-

maining, not 14½ minutes. I apologize to the gentlewoman.

Mrs. CAPPs. Could I beg of the Chair to consider then, because I was generous in yielding to my colleague, that we be given more time, because we have several people who still wish to speak?

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent, and I hope the gentleman on the other side will appreciate this since we were misinformed on the time, that we be given an additional 5 minutes on each side.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. TAUZIN. Mr. Speaker, reserving the right to object, why do we not take such time as the gentleman consumed. I think the gentlewoman yielded the gentleman 2 minutes. And what time did the gentleman just use, Mr. Speaker?

The SPEAKER pro tempore. Two minutes.

Mr. TAUZIN. Mr. Speaker, I would suggest, instead, that we add an additional 2 minutes to each side, in fairness.

So, Mr. Speaker, I ask unanimous consent that each side be granted 2 additional minutes to make up for the inaccurate call of the Chair.

Mr. WAXMAN. Mr. Speaker, will the gentleman yield?

Mr. TAUZIN. I would be happy to yield to the gentleman from California.

Mr. WAXMAN. That may well work, but again we have another example of trying to say no more than a certain amount. And it may be adequate, but let us be generous to our colleagues and let us be generous to the first responders.

Mr. TAUZIN. Mr. Speaker, reclaiming my time, I will be happy to just object and not have any extension, if the gentleman wants to argue about a couple of minutes.

The SPEAKER pro tempore. Objection is heard.

Mr. TAUZIN. Otherwise, I ask unanimous consent that each side be accorded 2 additional minutes to make up for the error of the Chair.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

The SPEAKER pro tempore. Each side will have an additional 2 minutes.

Mrs. CAPPs. Mr. Speaker, could I now inquire how much time is remaining?

The SPEAKER pro tempore. The gentlewoman from California (Mrs. CAPPs) has 4 minutes remaining, and the gentleman from Louisiana (Mr. TAUZIN) has 8½ minutes.

Mrs. CAPPs. Mr. Speaker, I reserve the balance of my time.

Mr. TAUZIN. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. COX), chairman of the Select Committee on Homeland Security.

□ 1445

Mr. COX. Mr. Speaker, we are here in extraordinary circumstances, rushing

this legislation to the floor as we must, because we are facing an emergency. We have got to provide compensation to those workers who may be injured or killed by the smallpox vaccine. The Committee on Energy and Commerce, of which I am proud to be a member, has done very, very important work to bring this bill to the floor in these emergency circumstances. The Committee on Homeland Security, of which I am also the chairman, has an abiding interest in making sure that our first responders are capable of dealing with crises such as this. If smallpox is used against American citizens as a weapon, we have got to be prepared and we have to be sure that the first responders do not themselves become weapons, because even though they are not manifesting the symptoms they are spreading the disease.

Smallpox spreads so fast that it is estimated it will kill at least 30 percent of its unvaccinated victims. Immunity is suspected to have waned among people who were vaccinated before smallpox was thought to have been eradicated in the 1970s. Like many of the Members of this Chamber, I am such a person who has had such a vaccination. Yet I am probably not protected.

Once contracted, smallpox incubates for 10 to 12 days, causing fever and nausea. As the symptoms abate, the victim becomes infectious but does not develop the tell-tale rash for another 2 to 4 days. That is why it is so important that these first responders be protected.

As we speak, there is no cure for smallpox. The vaccine we have works well before exposure, but evidence of post-exposure efficacy is only anecdotal. That anecdotal evidence points to the vaccine only working if the victim is inoculated within 4 days of contact with smallpox.

Our strategy to counter a smallpox attack depends on our first responders having already been vaccinated. It is going to be hard enough for public health officials to react within the necessary window of time. Administering the vaccine after the detection of a smallpox outbreak to a mobile American public with little or no immunity will cause immense problems. Doing so when first responders are not already themselves protected against smallpox could prove impossible. So far, only 20,000 nonmilitary personnel have been vaccinated. That is not nearly enough.

Taking the vaccine means taking a risk. Therefore, we must reassure our health care workers and our first responders that we understand this risk and we will stand by them. That is why I support the gentleman from North Carolina's vaccination compensation legislation, that is why I support putting this legislation on the floor in this emergency circumstance as we have, and that is why I support the leadership of the gentleman from Louisiana in bringing this to a quick and hopefully positive vote.

Mrs. CAPPS. Mr. Speaker, I am happy to yield 1½ minutes to the gentleman from Ohio (Mr. STRICKLAND), a member of the Subcommittee on Health.

Mr. STRICKLAND. Mr. Speaker, I am truly puzzled at the leadership on the other side. We are told that the administration sent this bill over here as an emergency. Yet I think they know that this bill is likely to be defeated because of the way it is being dealt with. If it is an emergency, ought we not to work together so that we can pass a bill? What is happening here today will result in the delay of this bill being passed.

The chairman of our committee says, of course, we are for the volunteers and I believe he is sincere. But if we are for the volunteers, why do we not listen to the volunteers? In the first 2 months of the administration's smallpox vaccine program, only about 25,000 of a planned 450,000 health workers have received the vaccine. Last week, three people died from heart attacks after receiving the vaccine, two health workers and a 55-year-old National Guard member. All three people had risk factors for heart disease, although it is not currently known whether the vaccine caused the heart attacks.

As a result of these challenges, a compensation program is needed, but these health care workers, these first responders are worried that the bill before us will not adequately provide for education and screening of the workers who are being asked to take the vaccine. If we screen the people who are at risk, we may save their lives and we can save money.

I am disappointed. I think we all know this bill is likely to go down to defeat, and unnecessarily so. Let us work together in this House. If not on this bill, what bill can we ever work together on?

Mr. Speaker, I include for the RECORD three letters, one from the International Union of Police Associations, one from the American Public Health Association and the other from the American Federation of Teachers in opposition to the administration's plan.

INTERNATIONAL UNION OF POLICE  
ASSOCIATIONS AFL-CIO,  
Alexandria, VA, March 27, 2003.

Hon. TED KENNEDY,  
Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR KENNEDY: On behalf of the International Union of Police Associations, AFL-CIO, representing law enforcement professionals from more than 500 agencies across the country and in Puerto Rico, I am writing to voice our concern regarding the Smallpox Compensation Program currently being debated in the House.

We urge you to work to ensure that this legislation will provide the security demanded and deserved by our first responders who elect to take the smallpox vaccine in order to better serve a nation at war. We hope this would include crucial screening and education for both the emergency personnel and their immediate families.

A mandatory funding provision is also needed to ensure that the varying states'

workers' compensation laws will not withhold compensation based on the fact that the vaccination is voluntary.

We also believe that these should be no five-day waiting period for compensation benefits. Furthermore, we hope to see some protection for those who elect not to take it.

We are asking more and more of those health care and public safety workers on the front lines of our nation's homeland security efforts. Providing them with ample security should they become disabled in their duties is critical, necessary, and is clearly and simply the right thing to do. I applaud your efforts to correct the deficiencies in this proposed legislation and will be privileged to assist you and your staff in these efforts.

Respectfully,

DENNIS SLOCUMB,

International Executive Vice President.

AMERICAN PUBLIC HEALTH ASSOCIATION,  
Washington, DC, March 30, 2003.

DEAR REPRESENTATIVE: On behalf of the American Public Health Association (APHA), representing more than 50,000 members from over 50 public health occupations, I urge you to oppose the H.R. 1463 in its current form and work to strengthen this legislation before it is brought to the house floor for a vote.

APHA strongly supports legislation to address current impediments to the national smallpox preparedness effort, including lack of compensation for those who become injured, ill, disabled or die; protections from liability for volunteer vaccinators and health systems; and adequate federal resources to enable public health systems to implement a smallpox vaccination program safely and effectively.

We are concerned that the current proposal before the House of Representatives fails to include a number of essential elements of a workable compensation program that will adequately protect volunteers and help to assure a successful program.

We respectfully suggest that the proposed legislation be strengthened in the following ways:

1. The compensation program should be financed by a mandatory funding source. It is important that volunteers who are injured, ill, disabled or die are assured that the protection they expect from a compensation program will be realized. We learned a clear lesson from the Radiation Exposure Compensation Act (RECA) Trust Fund when earlier this decade appropriations to the fund were not sufficient to pay claims and hundreds ill from Cold War-era exposure to radiation were left with IOUs. We have also learned in recent weeks that we have more to learn about the effects of the smallpox vaccine. Reports of heart inflammation and failure in possibly connection with the vaccine warn us that we must not have all the information at present to make an appropriate judgment about the amount of appropriation it will take to ensure that compensation can be guaranteed. Those first responders who volunteer to be vaccinated deserve to be assured that adequate compensation will be available for them.

2. Payment for illness, injury, disability, or death should include compensation for all lost wages, taking into account an individual's projected future earnings. Volunteers and their families should be confident that should they become unable to work due to disability they will not have to lose their income for future years, jeopardizing the income security for themselves and their families. In the rare case of death, family members, including children, should not be left uncompensated because of a loved one's sacrifice to protect others. Death and disability benefits should not be reduced by wages re-

placed before death or disability occurs. Compensation should be 100%, begin without delay, and should not be subject to a cap.

3. Volunteers should be compensated for adverse events regardless of the date on which they received the vaccine. Imposing an artificial time period in which one must volunteer is contrary to the goal of the vaccination program. Success should not be measured on the numbers vaccinated a specific period of time but rather, on whether at any given time we have a sufficient cadre of vaccinated first responders across the country. Speed should not be our measure—safety should. As we have seen from the start of the program, any number of barriers may result in extending the time in which we expect vaccinations to occur, including unexpected new possible complications from the vaccine. Establishing a set time frame for vaccination eliminates adjustments needed for unanticipated events.

4. Adequate Funds are needed to ensure that state and local health systems are prepared. Any proposal should recognize the need for additional funds to state and local health departments and health systems to implement the smallpox program. Current funds for bioterrorism preparedness efforts have been largely spent and obligated. States and localities and health systems are preparing for a broad array of potential threats in a time of great budgetary strain and increased demand for services. The recent outbreak of Severe Acute Respiratory Syndrome (SARS) is but one example of how public health is required to serve a dual role, protecting Americans from the latest emerging infectious diseases, the leading causes of death such as chronic diseases, and preparing for intentional acts of biological terrorism or war.

Resources are needed to ensure that the important smallpox preparedness program can proceed without shifting resources from other bioterrorism preparedness requirements and which maintaining our important programs to protect Americans from everyday health threats.

Again, we commend you for recognizing the importance of this legislation, we urge you to do it thoughtfully, and we remain ready to implement the smallpox preparedness program safely, efficiently and effectively.

Sincerely,

GEORGES BENJAMIN, MD, FACP,  
Executive Director.

AMERICAN FEDERATION OF  
TEACHERS, AFL-CIO,  
Washington, DC, March 28, 2003.

House of Representatives,  
Washington, DC.

DEAR REPRESENTATIVE: On behalf of the more than 1 million members of the American Federation of Teachers, including more than 65,000 healthcare professionals, I urge you to vote against considering H.R. 1413, the Smallpox Emergency Personnel Protection Act, under suspension of the rules. This procedure will prevent the House from consideration of the Capps-Waxman substitute, which is vastly superior to the Administration's proposal, H.R. 1413. Capps-Waxman provides increased education and screening, as well as a realistic compensation package for those who suffer a serious adverse reaction.

As you know, most workers have refused to participate in the smallpox inoculation program. Most believe there has not been sufficient information about the need for immediate vaccination. Further, there are serious doubts about the efficacy of existing education and screening programs, as well as the lack of a federal compensation program for healthcare volunteers and innocent victims who may suffer adverse reactions.

Since last fall, healthcare unions and other organizations have been working to develop a bipartisan program that would address these issues. Our proposal is based on the existing Department of Defense smallpox program, as is the Capps-Waxman substitute. The Administration's proposal that is being rushed to the House floor does not provide the same protections that are offered in the Capps-Waxman substitute.

#### EDUCATION AND SCREENING

The need to increase the education and screening of volunteers is clear. This requires additional funding. The Department of Defense's comprehensive education and screening program, for example, screened out 30 percent of those who were to be inoculated. The recent death of two nurses and the serious adverse reactions of others demonstrate the limitations of the existing program, which continues unchanged under H.R. 1413. Screening out those who are counter-indicated is essential to prevent adverse reactions and to protect healthcare workers who volunteer. The Capps-Waxman substitute addresses this critical need by providing additional funding for our public health agencies that are responsible for this program to assure complete education and screening. The Administration proposal does not.

#### COMPENSATION

Since the smallpox program is a voluntary federal program, injured individuals should be compensated by the federal government for the cost of both medical treatment and lost wages. The Administration's proposal seems to assume that there is adequate wage compensation through the workers' compensation system. Unfortunately, we have found only 14 states that can assure workers that they will be covered under workers' compensation. The remainder of the states are not sure that this program is "work related" since it is voluntary. Further, innocent third parties who suffer adverse reactions are not covered by workers' compensation. Also, many workers or innocent third parties are not covered by health insurance or may be subject to health insurance exclusions; therefore, full federal health insurance coverage for medical treatment is essential. While the Administration bill does cover health insurance, its restrictive definitions on disability and caps on financial benefits do not assure necessary wage replacement. The Capps-Waxman substitute includes necessary federally financed healthcare and provides the victims lost wages for the duration of the disability caused by an adverse reaction.

The bottom line is that a reasonable compensation program for adverse smallpox reactions should provide federal compensation for full medical coverage and adequate wage replacement. There should be no exclusions from this coverage, such as the five-day waiting period in the Administration program. This five-day exclusion is a major concern of many of our members. Further, restrictions in the Administration's proposals, such as capping benefit payments and using the 180-day rule forcing workers to choose to get the vaccination or forgo compensation, are unacceptable. The Capps-Waxman substitute satisfactorily addresses these issues.

Finally, this new program must be mandatorily funded and include a table of injuries in the statute to ensure workers get compensation, a provision in Capps-Waxman and not the Administration legislation.

Unfortunately, under the suspension of the rules procedure, the House will be precluded from addressing these issues. Our nurses, other health care workers, and first responders are dedicated professionals and will not shirk their duties to help the public. However, they deserve the best screening, edu-

cation, and compensation program for volunteering to receive this potentially dangerous vaccine. They deserve a vote on the Capps-Waxman substitute.

On behalf of the American Federation of Teachers, I urge you to oppose consideration of H.R. 1413 under suspension of the rules and demand a vote on the Capps-Waxman substitute.

Sincerely,

CHARLOTTE FRAAS,

*Director, Department of Legislation.*

Mrs. CAPPS. Mr. Speaker, I yield 1½ minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, who opposes this bill? The nurses, the police, the fire, the Public Health Association of the United States. They all oppose it. These are the health care heroes in our country. The reason that legislation is so important is that these people are going to be asked to put their lives on the line. They are the first responders. How busy are we that we can give them 20 minutes of debate, each side having 20 minutes to debate their fate? How hard would it be for us to have worked all day Friday to allow amendments to have been made that represents what the teachers, what the nurses, what the doctors, what the police and what the fire want for protections? How hard would it have been for us to have worked all day today if there is an emergency? Do we not as Members of Congress owe to these heroes working on a Friday and a Monday so we can debate what their needs are?

Then why is it important? It is important because the adverse reactions from the smallpox vaccine are a real concern. This bill coerces volunteers to be vaccinated within 180 days after the regulations are issued or they lose their rights to lost wages and to disability payments and even to death payments. They lose them. A pregnant nurse has only 180 days to be vaccinated after her baby is born.

This is wrong. Vote "no" on this bill. Let us have a full debate on the House floor with amendments.

Mrs. CAPPS. Mr. Speaker, I yield myself the balance of my time.

I stand here with my colleagues in opposition to this bill, drafted by the leadership with a kind of arrogance that presumes to know what is best for our first responders than they themselves know. With their testimony, with their letters, with their anguish, they implore us to give them the confidence that they need if they are going to be asked to take a risk to become a part of the shield to protect this Nation against terrorist attack.

We need to defeat this legislation for them so that they can have confidence in this House that we can do what is right, not just for them but for our Nation in this time of peril. And so I will close by using some of the language of my colleague, the ranking member of the Committee on Energy and Commerce, the gentleman from Michigan (Mr. DINGELL) who says in his written statement, "Right after we defeat this

bill, I hope that we can set about the task of creating bipartisan legislation that all Members of the House can support. The very people this bill purports to help, nurses, EMTs, police officers, firefighters, find this hastily crafted legislation lacking. Why? Because it fails to address their very significant concerns."

Mr. TAUZIN. Mr. Speaker, I yield myself the balance of my time.

Let me address the two principal objections to this bill. The first is that some of the first responders would like more coverage. They would like more coverage than we currently provide for police officers and firefighters who take the chances to go out and fight fires and sacrifice their lives, to go out and fight the criminal elements on the street and take the bullets and sometimes die and sometimes end up disabled and have a lifetime of lost wages. They would like to have more benefits than those individuals. But this is not a management-labor union discussion. This is an emergency. When the other side asked for time, for 2 weeks to work with us in a bipartisan fashion to up the benefits comparable to what police and firemen have, we did that. It is now in the bill.

The other objection they raise is that, well, this is not due process. We have taken this bill to the floor under suspension. We are not taking it through all the committees of jurisdiction. How many committees claim jurisdiction on this bill, Mr. Speaker? Let us start with the Committee on Education and the Workforce. We heard from the chairman who instead worked with us cooperatively to get this bill to the floor. Judiciary could have a claim on this bill. Judiciary worked with us cooperatively to get this bill to the floor. Appropriations could certainly have a claim on this bill, but they have worked with us to get this bill to the floor.

Why have all the committees worked with us to get this bill to the floor without all the markups and all the committees that might have jurisdiction on it? Because they know the emergency. They understand how important it is to get this bill done and signed by the President immediately. We have all been briefed. We have all been briefed about the danger of smallpox terrorism. We have all been briefed about how easy it would be for a country like Iraq, which we know probably has smallpox virus, to slip it into this country, to expose someone and then begin exposing our general population. They know that in 2 weeks, everyone once exposed becomes a carrier and exposes more people and that second- and third- and fourth-generation exposure occurs and we lose 30 percent of the population of America potentially. They know the danger. They know the emergency. Every committee has cooperated with us.

For 2 weeks we negotiated with the other side, a fair negotiation to get this bill in a way that you could accept

it. We made a dozen changes, raised the amount of the benefits, changed the percentages to 75 percent for those with dependents. We built a program as good as any program for anyone in the Federal service, and we built it as good as the policemen and firemen.

But that is not enough. Enough is never enough. But we do not have time to quibble about what is enough here. Do not come to this floor saying that no one supports this bill in the health care community. Let me read to my colleagues the supporters: The American Hospital Association, people who will be on the front line taking care of all these people infected with smallpox if we are not careful; the American Medical Association, the doctors who have to deliver the care; the American College of Emergency Physicians who are going to meet every sick person coming in with smallpox to an emergency room; the Alliance of Specialty Medicines, representing 160,000 physicians, among many others who support this bill.

This is an emergency. The administration, the Homeland Security Office, have told us we need to give this benefit to those people who will volunteer to take this vaccine to protect themselves and then to protect us. No one is coerced to do this. This bill does not mandate a single person take the vaccine. It simply gives the same rich mix of benefits to those who will volunteer to take this vaccine and protect the rest of us, to be ready to go into action to prevent the second- and third- and fourth-generation exposures that could wipe out so many in this country. It simply says to them, if you volunteer, we give you this coverage. If you volunteer, if you want to be one of those who serve this country in this special way, you get the benefits of this bill.

This bill needs to get passed now. It is an emergency. That is why it is on suspension. We ought to have the courage to pass it. If it does not pass today, it is only because somebody on the other side thinks enough is never enough and you want to quibble about numbers when the country is at stake.

Mr. Speaker, this bill ought to get passed. It needs to get passed now.

Mr. HOLT. Mr. Speaker, on September 11, 2001, as thousands fled over lower Manhattan during the terrorist strikes, many ran towards the burning buildings.

These brave men and women were first responders—the police, firefighters, and emergency medical personnel who risk their lives every day to protect their fellow citizens.

It would seem like the least we could do for them would be to not only applaud their efforts, but also provide them with support they need so they can do their jobs even better.

Unfortunately, this Congress has found it appropriate not to support, but to shortchange these everyday heroes.

A month and a half ago, we finally managed to pass the FY03 spending bill. Many of us here in this body sought to add vital funding for first responders, but we were denied. Our first responders were denied.

Today, apparently, this body is poised to again deny our first responders—in this case,

the men and women who will first respond to the unthinkable: a smallpox attack.

The need for the president's smallpox vaccination program is questionable, but now that the program exists, there is no doubt that we need to address compensation for those who volunteer for and are injured by the vaccine. In terms of negative side effects, this vaccine—essentially the same as the original developed in 1796—is perhaps the most dangerous one we currently have. In this most initial wave of vaccinations, we have already seen several serious injuries and even a few deaths possibly attributable to the vaccine.

That is why adequate compensation for vaccine injury is so crucial. Our first responders want to know that if they take the brave step of volunteering for the vaccination and get sick or die, they and their family will be taken care of.

The absence of a good compensation program has doubtless contributed to the snail's pace that the president's vaccination program has taken. Only 25,000 of the 500,000 in the "initial wave" of healthcare workers have actually been vaccinated.

The bill before us will not assure these workers that they will be adequately compensated. The lifetime cap of \$262,100 is small change for someone who is permanently disabled.

This bill also only covers workers vaccinated during a specific short time period after implementation. What kind of an incentive is this for new healthcare providers to get vaccinated in the future?

As the American Nurses Association has written, "the bill does not provide adequate education, prescreening, surveillance, and compensation."

Mr. Speaker, I have been working in this Congress to show my strong support for our first responders. Today I will continue to show this support by voting "no."

Ms. JACKSON-LEE of Texas. Mr. Speaker, I cannot support H.R. 1463, the Smallpox Vaccination Compensation Act. Our nation's first responders and health care workers take risks every day in order to serve the public good. Our firefighters face the risk to their lives every time they are called to duty. Health care workers come into contact with deadly germs on a regular basis. Even now, with the threat of bioterrorist attacks upon them, they are not flinching. They are there at work, serving the public good and putting themselves in harm's way.

And now that it seems that on top of the physical risks they are taking, the Republican leadership has decided that they and their families should also shoulder the financial risk of the fight against terrorism. We are asking that they serve as a kind of barrier, protecting the American public against the horrors of smallpox. If the virus were somehow leaked into the U.S., of course we would expect our first responders to be there at the sight of the emergency, and infected individuals would end up at our hospitals. We are trying to encourage those who work on the front lines to come in and get vaccinated, so that they do not get infected and pass the virus on to their families and the public.

But the vaccination program has been an utter failure so far, because the smallpox vaccination itself also carries with it moderate danger. As scientists have been telling us, the vaccination can make some people sick, or can even lead to death in rare circumstances. Whereas the death rate can be reduced or eliminated by good education and screening of people who might be at risk for complications, some of those who are vaccinated will become ill. They may have to be quarantined; they will miss work, perhaps for a long time. In today's economy—with medical costs what they are—this could be devastating, especially for someone with a family to support. Too many of our first responders and health workers have decided they cannot take that risk, and are asking that the Federal Government that is in charge of protecting the homeland—assume that risk for them. That seems fair enough.

The author of the bill before us today recognized the problem, and gave the bill the right name, but just didn't do a good job of matching resources with the needs out there. The problem with that is that if we don't give adequate assurances to people that they will be covered for any unfortunate episodes—they will not get vaccinated. Then in 6 months, or a year, we will find ourselves in this same situation—totally vulnerable to a smallpox attack. We cannot afford to take that risk. We must get it right the first time.

We are hearing from group after group of experts and people effected by this, saying, "Do not support this bill. It is not enough." The American Nurses Association, the Association of Firefighters, the American Federation of State, County and Municipal Employees—and the list goes on. These are not the money-grubbing types; they are humble civil servants who deserve our support. They are saying that this compensation package may not be enough to entice them to join the voluntary smallpox vaccination program. If they do not sign up, they will be vulnerable, and so will the American people.

The Democratic Capps-Waxman substitute would have gotten the job done. The Republican bill does not ensure adequate funding is available to compensate health care workers and other first responders injured by the smallpox vaccine. The Capps-Waxman substitute provides for mandatory funding for this program.

The Republican bill would pay only 66.6% of an injured worker's lost wages with a lifetime cap of \$50,000. The Capps-Waxman amendment would pay 66.6% of lost wages up to \$75,000 per year for as long as the worker is disabled. Workers with dependents would receive 75% of lost wages up to \$75,000 per year for as long as the worker was disabled.

The Republican bill would not compensate health care workers and other first responders for lost wages for the first five days they are injured. The

Capps-Waxman substitute would ensure that health care workers and other first responders who are out of work for longer than five days would have their unreimbursed lost wages compensated from the first day they missed work.

The Republican bill provides that a health care worker or other first responder who is killed by the smallpox vaccine receives only a flat death benefit. The Capps-Waxman substitute would pay a death benefit as well as any lost wages for workers who have dependents when they die.

Finally, the Capps-Waxman substitute has a specific authorization for funding for States to educate and screen potential vaccinees. The Republican bill does not. This is a critical component. There have been several deaths recently that occurred within a week or so after vaccinations. We must at the very least provide adequate education to people we want to get vaccinated to see if they are at risk for vaccine-related disease. They deserve that.

I will vote against H.R. 1463, and urge my colleagues to do the same.

Mr. LEVIN. Mr. Speaker, since September 11, we have begun to prepare for a number of events that once seemed unthinkable. One of them is an epidemic of smallpox, a deadly disease that we thought we had erased from the earth. The best way for us to protect ourselves against that is to vaccinate our first responders—the nurses, policemen, and firefighters that we would depend on to recognize a smallpox outbreak and quickly act to protect all of us against a disease that spreads rapidly and kills a third of its victims.

But in the three and a half months since President Bush announced plans to vaccinate 500,000 first responders, fewer than 25,000 have volunteered. In Michigan, where we had a goal of vaccinating 5,000 people, fewer than five hundred people have been vaccinated.

The smallpox vaccine has the worst record of negative side effects, including death, of any vaccine in our history. Experts estimate that one in a million people vaccinated will die, and many more will become ill, some seriously. Sadly, three people who volunteered to be vaccinated have already died.

These are sobering statistics, but it is not the personal danger that is keeping first responders from volunteering. Every day, our police, firefighters, and health care workers risk injury and death to help others. But giving them the smallpox vaccine without proper education, pre-screening, and surveillance doesn't just endanger them—it endangers all of us. When smallpox vaccination was still widespread, nearly 20 percent of infections from the vaccine came from secondary contact. And asking first responders to be vaccinated without a safety net if they become ill, are disabled, or die endangers their families and those who depend on them for support.

The Republican leadership says we don't have time to have a discussion with nurses, policemen, firefighters, and other first responders about what kind of program they need to feel safe because preparing for bioterrorism is an emergency. But if we don't have that discussion, we will have done nothing to address the emergency.

Receiving the smallpox vaccine is voluntary for first responders. First responders don't think the current program is safe, so they are declining the vaccine. That's why our current program isn't working and why after months of saying a vaccine injury compensation system wasn't necessary, House Republicans are willing to bring up a bill. But if the bill we pass doesn't make first responders feel safe, they still won't volunteer to be vaccinated, and we'll be right back where we started, except we'll have wasted a lot of time on a program we already know will be ineffective.

Wouldn't it make more sense to get it right the first time? By voting against this bill, which the International Union of Firefighters, the American Nurses Association, and the International Union of Police Associations say does not address the concerns that have prevented them from being vaccinated, I hope to give the House an opportunity to sit down with first responders and craft a workable solution. It is precisely because this is an emergency that we don't have time to pass unworkable legislation, wait for it to fail, and start again.

I regret that we did not have the opportunity to vote on a real solution tonight. I hope we can move immediately to pass a real solution, without wasting any more time on political gamesmanship.

Mr. CARDIN. Mr. Speaker, I rise in opposition to H.R. 1463. The House should be considering a bill today that responds to two basic questions: how do we encourage first responders—nurses, emergency room doctors, police, and firefighters—to volunteer for smallpox vaccinations; and second, how do we compensate them for any injury, disability or fatality they suffer in the event of an adverse reaction. Instead, the bill we are voting on—with no opportunity to amend or offer a substitute—accomplishes neither.

Last week, a 57-year-old nurse from my own state of Maryland died within 5 days of receiving the smallpox vaccine. The CDC is still investigating the nexus between the vaccine and her death. But to date, 12 health care workers who received the vaccine have experienced severe heart problems within day of inoculation, and 3 have died. These deaths and complications are sending waves of panic through the health care community.

On January 24, the President and HHS Secretary Thompson called for 450,000 first responders to be inoculated against smallpox. Today, as we come to the floor to consider this bill, the Administration has reached only 5 percent of its goal. The response has been dismal not because these workers lack dedication to public health and safety, but because they have justifiable doubts that this vaccine is safe and that if they are injured or die, they and their survivors will be compensated fairly.

Initial risk assessments by HHS did not come close to estimating the percentage of workers who would be at risk of illness or death from the smallpox vaccine. Many individuals are well on their way to heart disease, even though they have no symptoms and feel fine. Many Americans who have high blood pressure and diabetes are completely unaware of their condition.

Both high blood pressure and diabetes increase the risk for heart disease. Unfortunately, these serious problems usually don't cause symptoms until they've already done their damage. They silently harm many organs, including the heart and kidneys. Often

people are not diagnosed with these problems until it is too late to prevent damage. By the time symptoms are present, the condition may be critical.

Scientific studies have indicated that for every 100,000 who are immunized against smallpox, 2 or 3 will die. But the U.S. has only immunized 29,000 persons so far, and three deaths have already occurred. Why the discrepancy? HHS's initial risk assessments were based on immunization of much younger subjects, who are at far lower risk of heart disease. But the three workers who died were all in their fifties, and the average age of nurses in our workforce is 45. Those who would be immunized under the president's plan are at much higher peril of adverse reactions.

The CDC had already announced a temporary medical deferral for persons diagnosed with heart disease, and late last week it expanded that category to include individuals with three of more "major risk factors" for heart disease, including smoking, diabetes, high blood pressure and high cholesterol. Small wonder that the participation rate among our health care workers is so low. It is likely to remain low until workers gain confidence that government has a better understanding of risk factors.

Our nation's first responders should be protected against smallpox. But a vaccination program can only succeed to the extent that government succeeds in assuring workers that potential side effects will be minimized, and that they will be treated fairly and compensated adequately in the event of illness, disability, or death.

The underlying bill fails these tests. It limits payments for lost income to any annual maximum of \$50,000. There is no wage replacement for those who suffer permanently disability or death. Why would nurses, who earn an average salary of \$40,000, risk their families' future for so little?

The Burr bill won't begin replacing lost wages until 5 days have passed. A national program ought to provide first dollar compensation, not last-resort coverage. The Burr bill also imposes a deadline of 180 days for workers to qualify for compensation. Those vaccinated after that time would not qualify. How can we know how long it take our States and localities to vaccinate a sufficient number of volunteers?

In addition, the bill provides no funding for education, screening, or surveillance. The National Association of County and City Health Officials has estimated that to provide pre-vaccination education and screening, and surveillance for adverse reactions would cost between \$154 and \$284 per person. If the Administration plans to vaccinate 500,000 workers in Phase I and another 10 million in Phase II, we are taking about a \$2 billion unfunded mandate to our localities.

Mr. Speaker, our towns' and cities' budgets are already strained as they conduct other bioterrorism preparedness activities. Our localities do not have sufficient funds to prepare for chemical, biological and radiological terrorism, and more than half of our local governments have reported that smallpox and other bioterrorism planning has negatively affected other local public health services. They are delaying programs, turning down community requests, and reducing the frequency of client visits.

Mr. Speaker, we have asked America's first responders to put their lives on the line to protect the rest of us. The compensation we offer

must be adequate; it must be immediate; it must be guaranteed. I believe the House is united in its appreciation of an support for our first responders. Legislation to compensate them for their illness, disability or death should reflect that level of support. I am disappointed that the bill before us does not do that. I urge the House to reject this bill and I call upon the leadership to return with legislation that will provide a meaningful compensation program for those on the front line against bioterrorism.

Ms. SCHAKOWSKY. Mr. Speaker, the Smallpox Emergency Personnel Protection Act (H.R. 1463) is being rushed to the House floor today for a vote under suspension, denying us the opportunity to amend this bill to ensure that the compensation we offer our first responders is both adequate and meaningful. I have serious concerns both about the deficiencies in H.R. 1463 and the process by which it was brought to the floor. This is an ill-considered bill that fails to provide adequate compensation for persons volunteering for the smallpox inoculation and, therefore, will undermine the very goal of encouraging first responders to participate in the vaccine program. Three recently immunized military personnel and civilian health care workers have died of fatal heart attacks and Federal health experts are investigating at least 15 more cases of possible cardiac reactions to the immunization. Given recent events such as these, the limitations of H.R. 1463 will likely result in even more refusals by first responders to volunteer for the smallpox vaccine.

H.R. 1463 fails to offer meaningful compensation, does not have guaranteed funding, and attempts to coerce first responders into getting inoculated. It will not work. That is why it is opposed by many organizations representing first responders, including the American Nurses Association, International Union of Police Associations, International Association of Firefighters, American Federation of Teachers, American Public Health Association, Infectious Diseases Society of America, American Federation of State, County and Municipal Employees, and the Service Employees International Union.

H.R. 1463 is based on the false assumption that nurses, firefighters and other first responders will be compensated by other benefit programs, such as workers' compensation and health insurance. In the case of smallpox, however, there are no guarantees that a person injured by the smallpox vaccine will be covered by workers' compensation or will be adequately insured. In fact, there are only 14 States where it appears at all certain that claims for benefits will be honored by the State workers' compensation program, based on a recent survey by the AFL-CIO. As a result, those injured by the smallpox vaccine may receive far less total compensation than other first responders currently covered by their Public Safety Officers Benefit program.

If, for example, under H.R. 1463, a 30-year-old nurse were permanently injured or killed as a result of the vaccine, she or her survivors would be eligible for a one-time lump sum payment of \$262,100. This amount is equivalent to 5 years' pay for the average nurse. This is not adequate compensation for a nurse unable to work, her family or her survivors. Partial and temporary disabilities as a result of the smallpox vaccine are also arbitrarily capped with a lifetime payout at \$262,100. Compensation should be provided to workers

for the duration of disability or to survivors' families until the spouse remarries or the children are no longer minors. If workers are worried about their economic security, and that of their families, they for good reason will continue to be reluctant about getting the vaccination.

Although the compensation offered through H.R. 1423 is scant at best, our first responders cannot even rely on benefits offered because there is no guaranteed funding. H.R. 1423 is funded by discretionary spending and would be subject to the annual appropriations process. Funding for compensation and medical care should be mandatory spending, similar to the Vaccine Injury Compensation Program for injuries due to childhood vaccines. Workers should not have to worry each year about whether there will be an adequate appropriation to provide promised benefits and medical care.

As if lack of compensation and funding did not make this bill already untenable, H.R. 1423 attempts to coerce workers into getting the vaccine. Current workers must receive the vaccination within 180 days following the issuance of interim final regulations in order to be eligible for compensation. New hires must be vaccinated within 120 days of hire to be eligible. There is no exception in the event that the public health department is unable to meet the deadline or a worker has a temporary condition that prevents immediate vaccination, such as pregnancy or the presence of an infant at home. Smallpox vaccination should be voluntary. When legislation only allows first responders to be eligible for compensation if they are vaccinated within months of the bill's passage, we know that people on the front line are being manipulated into getting the vaccine and getting it quickly.

Our first responders deserve better. They deserve a full and fair smallpox compensation package. Unfortunately, we do not have the opportunity to correct the deficiencies in H.R. 1463 because we are denied the opportunity to consider amendments. I oppose H.R. 1463 and look forward to voting on an effective alternative when the bill is brought under a rule that allows for a full and fair opportunity for amendment.

Mr. UDALL of Colorado. Mr. Speaker, I regret that I cannot support this bill.

When President Bush called for the voluntary vaccination against smallpox of 500,000 health care workers and other first responders last December, many criticized the plan for being incomplete. Not only did it not include a federal compensation fund to help those injured by the vaccine or their survivors, but the plan did not provide adequate education, prescreening, or surveillance. The relatively few numbers of health care workers and first responders who have received the vaccine—only about 21,700 to date—indicate that there are real concerns about the plan's shortcomings.

After all, the smallpox vaccine uses a live strain of the virus. The vaccine has the worst record of negative side effects of any vaccine in the world. So it is critical that those being vaccinated understand the risks involved and be prescreened for conditions that require them to avoid the vaccine. The recent deaths of a nurse, a nurses aide, and a National Guardsman after their vaccinations only underscore this point.

Like the President's plan, this bill has serious shortcomings. In particular, I'm concerned

that the compensation program is not comprehensive enough and that it does not provide adequate education and safeguards. I believe that the House must consider improvements to this bill. But the Democrats are being denied the opportunity to offer amendments to do that.

For these reasons, Mr. Speaker, I must oppose this legislation in its present form.

Mr. STARK. Mr. Speaker, I rise in opposition to H.R. 1463, the Smallpox Emergency Personnel Protection Act.

This Republican legislation has a lot more to do with public relations than protecting our first responders so that they can do their job to protect the rest of us. No one doubts that the possibility of a terrorist attack is very real. Yet, Republicans are asking Congress today to short change those Americans on the front lines here at home—our doctors, nurses, police officers, fire fighters and others willing to risk both serious physical harm and financial ruin.

Congress has a great responsibility to provide security to these brave and selfless Americans. The smallpox vaccine is the most dangerous vaccine in current use. Thus, the decision to become inoculated is not one to be taken lightly. Those who are willing to step forward and receive inoculation to assure that they'll be there to protect others if the need arises, do so at a risk to their lives and, by secondary transmission, to the lives of loved ones. At a minimum, we need to assure these people that they and their families have affordable access to healthcare and won't confront financial hardship if they have an adverse reaction to the vaccine.

We are not talking about a small number of people at risk. Experts estimate that out of the 10 million healthcare and first responders who the Administration is requesting to volunteer for this smallpox inoculation program, approximately 10,000 will experience serious, though not life-threatening reactions, upwards of 520 will experience potentially life-threatening reactions and it is anticipated that 5 to 10 people will die. These estimates do not include those individuals who may be secondarily exposed to the live virus by being in contact with an inoculated individual. Furthermore, just in the last week we've discovered something previously unknown about the smallpox vaccine; it may cause heart attacks in people with particular cardiac conditions.

The Administration's Smallpox Vaccine Compensations bill is inadequate in numerous ways. Among its inadequacies, it:

- Fails to provide adequate funding to ensure that state and local public health officials can implement needed pre-inoculation education and screening and post-inoculation surveillance programs;

- Ignores the need for work place protection standards for individuals who refuse to volunteer for the vaccine program;

- Provides no requirement that health insurance companies guarantee health insurance coverage for adverse medical events that occur from participating in this voluntary program;

- Fails to guarantee immediate access to medical care for volunteers who have no insurance or who are not eligible for Medicaid or Medicare;

- Provides a wholly inadequate death benefit and a benefit for permanent and total disability limited to \$262,100. This in no way replaces



the lifetime income that will be lost to the families of the brave individuals who volunteer for this inoculation and are adversely affected;

Fails to compensate individuals who become sick and miss work for 5 or fewer days;

Doesn't guarantee that the compensation program is even funded. Rather than making it a mandatory appropriation which would assure that the program is fully funded, it is discretionary spending; subject to the vagaries of the annual appropriations process.

These many inadequacies have lead every major organization representing nurses, fire fighters, and other frontline personnel to oppose the legislation. These organizations include the American Nursing Association (ANA), the American Public Health Association (APHA), the International Association of Fire Fighters, the Infectious Disease Society of America and the Service Employees International Union (SEIU).

My colleagues, Representatives HENRY WAXMAN and LOIS CAPPS, have introduced legislation (H.R. 865) to create a smallpox inoculation compensation program that would meet the needs of these brave volunteers. Unfortunately, the Republican Leadership has forbidden that bill to be considered by the full House. For that reason, we are forced to vote NO today and try to get the Republican Leadership to recognize that providing true protection to our emergency personnel who have volunteered to become inoculated against smallpox is a priority for this Congress. We need to do the job right!

I urge my colleagues to vote against H.R. 1463 today and insist that a compensation bill that truly protects the interests of these volunteers for the smallpox inoculation program be returned to this Chamber for a vote and passage.

Mr. TOWNS. Mr. Speaker, I rise today in opposition to H.R. 1463. While it offers significant liability protections to those entities that are responsible for administering the vaccination program, it simply does not provide the protection required by frontline health workers who have been asked to volunteer for the national smallpox vaccination program. More to the point, we have had three recent deaths, which can be reasonably traced to the vaccinations, and several other workers and military personnel have experienced cardiac-related problems after being vaccinated.

All the major unions—Service Employees International Union, American Federation of Teachers, American Nurses Association, International Association of Firefighters, International Union of Police Associations—who represent health workers and first responders, have declared that this legislation fails to provide an adequate compensation program. Thus far, only 14 states have been able to definitely assure workers that workers' compensation programs would cover them. Further, innocent third parties who suffer adverse reactions are not covered by workers' compensation. In the '60's, more than 20% of the adverse vaccination events occurred in secondary contacts. Therefore, the vaccination program poses a risk not only to first responders, but also to their patients and their families.

Moreover, public health experts, like the Centers for Disease Control's Advisory Committee on Immunization Practices, now question whether anyone with three or more "major risk factors" for heart disease, including smok-

ing, diabetes, high blood pressure and/or high cholesterol should receive the smallpox vaccine. Given the cost of screening for the above factors, it is particularly troubling that there is no guaranteed funding for medical screening, education or surveillance. Our armed services personnel received personalized education, and free and confidential prescreening prior to the administration of the vaccine. This process resulted in one-third of the potential recipients being screened out of the program. We should offer the same education and screening opportunities to our nurses and first responders.

Finally, Mr. Speaker, even though this bill falls short on a compensation and education and screening program, I remain hopeful that the Emergency Supplemental will at least provide adequate funding for States and localities to administer this program when and if an adequate compensation program is put in place.

Mr. SENSENBRENNER. Mr. Speaker, the bill before the House today, H.R. 1463 contains several provisions that are within the jurisdiction of the House Committee on the Judiciary as provided in Rule X of the Rules of the House of Representatives for the 108th Congress. The Committee on the Judiciary would normally proceed under regular order to examine legislation containing such provisions within our jurisdiction and take appropriate actions in Committee meetings.

However, the Bush Administration has maintained that there is a pressing need for this legislation's swift passage in order to provide first responders and other emergency personnel with all due encouragement and assurances to participate in ongoing smallpox vaccinations. Because of the exigent circumstances, the Committee on the Judiciary, like the Committee on Energy and Commerce and the Committee on Education and the Workforce, has elected not to hold a hearing or markup on this legislation and has allowed it to proceed for consideration by the full House. The Committee's deferral of action should not be interpreted as any lack of jurisdiction over or interest in H.R. 1463.

The primary purpose of the bill is to establish a compensation program for emergency personnel directed to receive smallpox vaccines pursuant to authorities granted by the 107th Congress in legislation establishing a Department of Homeland Security. This new program is to be established under the Public Health Service Act and is to be under the direction and control of the Secretary of Health and Human Services. The bulk of the provisions in Section 2 of H.R. 1463 dedicated to establishing the new compensation program are outside the scope of the Judiciary Committee's jurisdiction.

However, H.R. 1463 also contains provisions related to judicial review of determinations made by the Secretary of HHS under the Act and provisions modifying existing statutes concerning the liability of the United States and remedies available under the Federal Tort Claims Act (Chapter 171 and section 1346(b) of Title 28 United States Code) for covered persons suffering injury resulting from smallpox vaccinations. These provisions are clearly within the Rule X jurisdiction of the Committee on the Judiciary.

For example, Section 2 of H.R. \_\_\_ adds new provisions titled "(e) Review of Determination" that affects the role of the courts and estab-

lished review procedures mandated by the Administrative Procedures Act—both within the Committee's jurisdiction. Furthermore, Section 3 of H.R. 1463 amends 42 U.S.C. § 233(p) to assume liability for the government relative to a new category of acts and omissions by those acting within the scope of their duties as part of the smallpox vaccination program. Section 3 of the bill also modifies the requirements for exhaustion of remedies, statute of limitations, offsets, and exclusivity of relief available for tort claims in federal district courts arising from smallpox vaccinations administered under a declaration by the Secretary of HHS. These provisions of H.R. 1463 are also clearly within the Rule X jurisdiction of the Committee on the Judiciary.

If the Committee on the Judiciary had the luxury of unlimited time, we would certainly seek the normal referral of H.R. 1463 to examine these and other provisions further and consider any appropriate changes. However, as I stated earlier, the Administration has pleaded the need for swift passage and implementation of this new compensation program to encourage necessary smallpox vaccinations. The Administration and many of my colleagues believe that the importance of these vaccinations to the security of our homeland against biological attack outweighs considerations about the normal legislative process in this case. I do not dispute that assessment, and therefore as Chairman of the Committee on the Judiciary I have agreed that this bill should move forward in an expedited fashion without the normal review by our Committee.

Mr. UDALL of New Mexico. Mr. Speaker, I rise in opposition to the Small Pox Vaccination Compensation Fund Act.

We should give pause about voting for a smallpox bill that does not safeguard the health, safety and livelihood of workers asked to volunteer for the smallpox vaccination. This bill is opposed by a number of groups, including the International Association of Fire Fighters and the American Nurses Association.

There has been a great reluctance among health care workers and first responders to risk the loss of health and income without an adequate safety net for themselves and their families. While the legislation is promised on the assumption that workers will be eligible for workers' compensation in the event of an injury, the reality is that, in most states, workers cannot depend on this. In fact, there are only 14 states where it appears certain that claims for benefits will be honored by the state workers' compensation system.

Therefore, workers who are permanently and totally disabled will be eligible only for this bill's maximum benefit of \$262,100. This represents about five years' wages for the average nurse. For a worker who becomes partially disabled either temporarily or for life, the maximum benefit payable is only \$50,000. If the aim of the legislation is to encourage workers to be vaccinated, this bill will not do the job. Workers will continue to be reluctant to be vaccinated in the absence of assurances that the economic security of their families will not be jeopardized.

I also object to the bill's requirement that workers receive the vaccination within 120 days of the date regulations are issued. Any worker who is vaccinated under the Secretary's declaration must be eligible for federal

compensation. It is punitive to deny compensation to a worker who participates at a late date.

The legislation fails to ensure that the smallpox program will be carried out safely, in stark contrast to the program in place for military personnel. The bill does not establish any standards for ensuring that workers are properly educated and medically screened prior to volunteering for the vaccination. A careful program to screen out workers with contraindications will not only save lives, it will reduce the amount of federal money needed for compensation. The legislation also fails to include requirements for monitoring those who are vaccinated to catch adverse reactions before they develop into life threatening complications. There is also no funding for state and local public health departments to carry out the program safely.

Another significant flaw in the bill is that funding for the compensation program is not mandatory. Workers who have lost their health and livelihood should not have to wage a fight for compensation each year during the appropriations process.

The legislation also fails to include a table of injuries that ensures that workers will be awarded compensation quickly. After years of experience with the smallpox vaccine, there are injuries, that occur within specific timeframes, that are known to be caused by the vaccine. This schedule of injuries must be included to ensure that compensation will be quick and certain. Otherwise, workers cannot be certain before receiving the vaccine that the most likely serious injuries will qualify for compensation.

Unfortunately, but not surprisingly, the House Rules Committee has denied an opportunity for an alternative measure to be on the floor. Had the Capps-Waxman substitute been allowed, I would have supported it. In contrast to the proposal designed by the Bush administration and introduced by Representative BURR, the Capps-Waxman substitute includes measures to safeguard the health and safety of workers asked to volunteer for the smallpox vaccination program. Moreover, the Capps-Waxman substitute better addresses the concerns of workers who fear that a serious injury or death from the smallpox vaccine would lead to economic catastrophe for themselves and their families. As a result, the Capps-Waxman substitute will provide for a safer and more effective smallpox vaccination program.

The BURR legislation is deeply flawed and I urge my colleagues to oppose it.

Mr. BURR. Mr. Speaker, this legislation, "The Smallpox Emergency Personnel Protection Act," is another positive step towards preparing our citizens for a bioterrorist attack.

For more than 2 years, I have been working on legislation to strengthen and build our nation's public health system. The first bill was signed into law in 2000 and established grant programs to address core public health capacity needs. The second bill was last year's bioterrorism legislation. In part, that legislation built on the grant structure created in 2000 and sent a significant amount of money to our public health infrastructure. That money is currently funding basic needs such as computers and Internet access for public health departments and more specific needs such as decontamination chambers. Needs that are essential for providing public health care services and critical for bioterrorism preparedness.

On January 24 of this year, Secretary Tommy Thompson asked hospital workers, police officers, firefighters, and other public officials, to volunteer to receive the smallpox vaccination. Understandably, the reception was lukewarm. Nurses and physicians were concerned about the side effects of the vaccine and wanted to be compensated for any medical care or lost employment they incurred as a result of their vaccination. Hospitals were worried about liability. And public health departments were worried about the cost.

In response, we have H.R. 1413. This legislation addresses the concerns of all of those individuals. We will now compensate vaccinated individuals for lost wages and medical expenses. Additionally, if they suffer a permanent disability, or, in the very unfortunate and unlikely case, death, we will give them the same amount of money that police officers and firefighters receive if killed in the line of duty. The legislation clarifies that if a vaccinated individual infects other individuals—they too are eligible for those benefits. Finally, the legislation amends the Homeland Security Act to ensure that hospitals, pharmacists, public health departments and any other involved individuals will not be liable for properly vaccinating people who then suffer adverse reactions.

One very important point about this legislation is that it continues to give the Centers for Disease Control and Prevention, State and local health departments, and hospitals the flexibility they need to correctly vaccinate thousands of people. In light of the unfortunate situation in Maryland, concerns have been raised about vaccinating individuals with heart conditions. The CDC Director promptly responded by recommending that those individuals be screened out of the vaccination pool. We all want this program to be successful, and success depends on flexibility and Federal Government support when individuals suffer adverse reactions.

Let me end by saying that I am extremely proud of North Carolina and its response to Secretary Thompson's request. Thus far 26 hospitals have vaccination plans, 875 individuals have been vaccinated, and many more have volunteered. I believe that this legislation will reassure all of the current and future vaccination recipients in North Carolina and around this country that the Federal Government wants this program to work and backs up our request through compensation benefits.

Ms. PELOSI. Mr. Speaker, I had hoped to come to the Floor today with a bill I could recommend to my colleagues on both sides of the aisle.

We had been working together, over the past few days, in serious negotiations over what would be required of a vaccine program in order for our nurses and first responders to feel secure enough to put their health, their lives, and their livelihoods on the line by taking a smallpox vaccination.

There was progress on some features that are reflected in this bill. We are grateful for that.

But unfortunately, those talks broke down last week and we find ourselves instead in a process that restricts our discussion of this issue and does not allow us to consider a Democratic alternative—proposed by colleagues LOIS CAPPS and HENRY WAXMAN—that is based on the recommendations of the nurses, the firefighters, the police, the emer-

gency medical technicians, and other first responders.

They are being asked to step forward and take a vaccination that has the potential for dangerous side effects—including the possibility of death.

Make no mistake about it. The votes that count are not the votes that we will cast here in this body. The votes that count are the votes of those men and women who are nurses, medical workers, firefighters, EMTs, police officers, and others who will go to the state health department and roll up their sleeves and take a risk to help improve the nation's preparedness against terrorist attack.

These are not people who avoid risk. They take risks almost every day. You know who they are. They are the caregivers who tend to the sick, rescue the victims, and walk the streets to make us safer.

They are the night-duty emergency room nurses who crawled through the rubble of the Federal Building in Oklahoma City to try to find someone—anyone—who was still alive.

They are the firefighters who ran up the stairs instead of down the stairs in the World Trade Center to help the last of the people trapped in that horrific nightmare to escape.

They are the police officers who walk the beat every day and who risk their lives to keep us safe.

They are also mothers and fathers, caregivers for elderly parents, and breadwinners for their families. And they have a very human and understandable desire to protect their families in case something goes wrong.

It is an unfortunate fact that some of the people who will take the smallpox vaccine will suffer serious adverse effects that could cause them to be unable to continue their current job, see their pay reduced or—if they were to become totally and permanently disabled—lose the ability to work altogether.

They could even lose their lives. We have all seen the news reports of the National Guardsman, the nurse's aide in Florida, and the nurse on the Eastern Shore of Maryland. Each of them received the vaccine, but then later died of cardiac arrest.

We don't know, yet, whether there is a direct link between the smallpox vaccine and these heart problems. The Centers for Disease Control have not been able to definitively rule a connection in or out.

But the CDC has now recommended that anyone who has a known heart ailment not receive the smallpox vaccination.

And New York State and Illinois—as well as a number of municipalities—have temporarily suspended any further vaccinations until there is a more thorough investigation.

The bottom line is, whether any connection is proven between the smallpox vaccine and heart disease, there will ultimately be injuries and deaths from the vaccine. There is no question of that.

The choice of whether to get vaccinated is up to the nurses and the other first responders themselves based, in part, on the adequacy of the vaccine program we provide for them.

That is why we believe an adequate smallpox vaccine compensation package has to have a clear education component so that the health care workers and other first responders will know what the most likely side effects will be and what the effects could be on their families.

Legislation of this kind should have the strongest possible pre-screening program based upon the most up-to-date information.

It should have an aggressive monitoring program so that health experts can follow up the vaccinations and look out for patterns of adverse reactions so we can adjust the pre-screening program.

And it should provide a level of financial security so those who take the vaccination can be assured that their families will receive compensation if they become disabled or lose their lives protecting Americans from the horrific effects of a terrorist-sponsored smallpox attack.

The Republican bill falls short on each of these counts.

There is a better way. We can defeat this bill under the suspension of the rules. We can go back to the negotiating table or we can bring a new bill to the Floor with a substitute amendment that the nurses and first responders say will truly respond to their concerns.

My colleagues, I urge you to defeat the Burr bill today. Let us have a vote on the Capps-Waxman proposal that will better protect our public servants—our heroes and our heroines—and better produce the desired effect of having more frontline workers inoculated against a smallpox attack.

Mr. Speaker, I urge a “no” vote on the Republican bill.

Mr. DINGELL. Mr. Speaker, I join the millions of our Nation's first responders in opposition to H.R. 1463, the Smallpox Emergency Personnel Protection Act of 2003.” Right after we defeat this bill, I hope that we set about the task of crafting bipartisan legislation that all members of the House can support. The very people this bill purports to help—nurses, EMTs, police officers, firefighters—find this hastily crafted legislation lacking. Why? Because it fails to address their very significant concerns.

Mr. Speaker, we are voting on smallpox vaccine injury legislation today because the Administration's current vaccine program is not working. Only a fraction of the number of first responders that the Administration has said are needed to protect us have volunteered to take the smallpox vaccine. The Administration has recommended that as many as ten million first responders be vaccinated for smallpox so that if we ever are attacked by the use of smallpox we will have a core capacity of health care and emergency personnel vaccinated and able to take appropriate action right away. The latest numbers from CDC indicate that less than 26,000 of them have been vaccinated. Why so few? Because the vaccination carries with it substantial risks, including adverse affects that could cause disability and, in some cases, death.

Proponents of H.R. 1463 will make much of what they think that bill does. I ask you to focus on what it lacks. H.R. 1463 does not do enough to ensure adequate screening and education and otherwise prevent adverse events from happening in the first place. In the event that tragedy strikes and someone is injured or killed by the vaccine, H.R. 1463 does not make adequate provision for lost wages. And, what H.R. 1463 lacks is support from the people to whom it is intended to appeal. H.R. 1463 is opposed by the American Public Health Association, the International Union of Police Associations, the American Nurses Association, the International Association of Fire Fighters, the American Federation of Teachers, the American Federation of State, County, and Municipal Employees, the Service Employees International Union, and the Infectious Disease Society of America.

Finally, Mr. Speaker, we are all aware of accounts of three deaths in the last week or so from cardiac arrest in persons who received the smallpox vaccine. Health care officials cannot positively rule out the smallpox vaccine as the cause or a contributing factor in these deaths. The CDC has taken swift action to revise its guidelines and has indicated that there may be further revisions. These uncertainties about the known, and I hasten to add the unknown, risks of the smallpox vaccine have greatly increased the fear factor among prospective vaccinees. We should be doing all we can to obtain and assess the relevant information on the vaccine and smallpox risks. That cannot be done by using the process by which this bill is before us today. We have had no hearings, no markups, and no opportunity to perfect this bill on the floor with amendments. All we have is the administration's proposal and a take it or leave it procedure.

I recommend that we listen to our first responders, vote “no” on H.R. 1463, and get busy writing legislation we can all support.

Mr. BROWN of Ohio. Mr. Speaker. This isn't, or shouldn't be, a partisan debate. Democrats and Republican members of Congress are in the same boat. The question we have to answer for ourselves is: do we vote “yes” to a bad bill, or do we demand something better?

The answer to that question is important. Critical protections for first responders and their families hang in the balance.

H.R. 1463 is supposed to protect members of the police, the nation's nurses, our firefighters, and other first responders who voluntarily receive a smallpox vaccine, and sustain an injury from that vaccine.

But the Nation's first responders oppose this bill. This bill is supposed to increase the number of first responders who voluntarily receive a smallpox vaccine.

But the bioterrorism experts who helped put together the smallpox vaccine program say H.R. 1463 won't work. It won't improve participation rates.

So the choice both Republican and Democrat members of Congress face is whether to dismiss the concerns of first responders, ignore the advice of bioterrorism experts, and vote for this bill anyway.

Have members of Congress become so far removed from the people we represent that we would pass a bill opposed by the very men and women it is supposed to protect?

Do we in Congress really think we know better than bioterrorism experts when it comes to bioterrorism preparedness?

Protecting first responders and their families in the event of a vaccine injury and bolstering vaccine participation rates are important objectives.

They are time-sensitive objectives. The National Smallpox Vaccination program is already underway, and participation is lagging far behind goal.

About 25,000 people have been vaccinated, less than 5 percent of the March 1 benchmark. The experts tell us H.R. 1463 won't jumpstart the smallpox vaccine program, so it won't enhance bioterrorism preparedness.

Congress must now waste valuable time enacting the wrong bill, particularly when our nation's ability to respond to bioterrorism is at stake.

Nor should members of either side of the aisle support legislation that is

unapologetically dismissive of the very people this bill alleges to protect . . . the nurses, firefighters, police, and others who voluntarily place themselves at risk on our behalf.

Public health experts and first responders tell us that H.R. 1463 falls short in fundamental ways.

To meet the goals of efficiency, timeliness, fairness, and program integrity, the compensation program must be backed by an injury table. H.R. 1463 lacks one.

Responsible administration of any vaccination program requires education, pre-screening and surveillance. H.R. 1463 requires these activities, but doesn't fund them.

A lynchpin in any compensation program is guaranteed funding. Without it, financial protection is a possibility, not a promise. There's no security in that. And there is no guaranteed funding in H.R. 1463.

The incidence of smallpox vaccine injury is rare. However, in the event a serious injury occurs, volunteers may be out of work for an extended period or permanently. First responder volunteers, and their families, must be assured adequate and continuing financial protection.

H.R. 1463 would cap funding so that wage replacement would run out after about five years. For permanent disability or death. “Inadequate” doesn't begin to describe it. “Insulting” is closer to the mark.

H.R. 1463 is not a legitimate financial safeguard. It's a placebo. Our nurses, firefighters, EMTs, and other first responders deserve better.

Mr. TAUZIN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PETRI). The question is on the motion offered by the gentleman from Louisiana (Mr. TAUZIN) that the House suspend the rules and pass the bill, H.R. 1463.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mrs. CAPPS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

□ 1500

HONORING FAYETTEVILLE, NORTH CAROLINA, ON CENTENNIAL OF WILBUR AND ORVILLE WRIGHT'S FIRST FLIGHT

Mr. LATOURETTE. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 58) honoring the City of Fayetteville, North Carolina, and its many partners for the Festival of Flight, a celebration of the centennial of Wilbur and Orville Wright's first flight, the first controlled, powered flight in history.

The Clerk read as follows:

H. CON. RES. 58

Whereas on December 17, 1903, Wilbur and Orville Wright achieved history's first sustained and controlled flight with a heavier-